

Impossible Expectations? A study of Abused Mothers in the Child Protection System

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Abstract

Abused mothers involved in the child protection system are faced with many expectations which are placed upon them by the various professionals who are assigned to their “case”. Quite often these expectations are conflicting, making it unrealistic for the mother to fulfil all of them. For example, while private family law expects mothers to facilitate an ongoing relationship between their children and the children’s father, social workers may expect a mother to move away and break decisively with an abusive father in order to protect her children. The mother is expected to exercise autonomy in order to navigate these relationships and make life decisions which will affect her and her child. However, the mother’s abusive relationship has systematically chipped away at her autonomy; undermining her capacity to make decisions independently.

The mother’s ability to think and act autonomously is vital in order for her to free herself from the control of the abuser, whilst also giving an account of herself throughout the child protection process. The relationships she has within the child protection process should therefore encourage her autonomy. By better understanding how to promote an abused mother’s autonomy, professionals can craft their practices in a way which supports the mother to think and act for herself. These practices would empower the mother to make changes which are sustainable, and not forced upon her.

I have applied the framework of relational autonomy, to examine the relationships between the mother and her abuser, her domestic abuse advocate, her social worker, the police, the Multi Agency Risk Assessment Conference (MARAC) and the family law system, to gain an understanding of what makes a supportive relationship which fosters rather than undermines the mother’s autonomy.

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This thesis is dedicated to Violet Mayhew – to whom I made a promise to make every day count.

Carpe Diem

Chapter one - Introduction

1.1 Introduction

Mothers who have been subjected to sustained domestic abuse often find themselves involved in the child protection system, because their children are deemed to be at risk of significant harm due to the violence within the home. When a concern is raised that a child is at risk of harm it is the responsibility of social workers to investigate. If a child is subsequently assessed as having been subjected to, or being at risk of, significant harm a social worker will be tasked with initiating and overseeing a child protection plan for that child. The principal purpose of the child protection process in its entirety is to reduce the risk of harm to the child; however, the central element of the process and specifically of the child protection plan, is intended as a multi-agency response to the protection of the child.¹ In addition to the family's social worker, there may be a variety of agencies involved with the family. Professionals may be engaged with the mother due to the domestic abuse and are then required to become active in the child protection process, whilst some professionals become involved with the family because of the child protection process; it is this multi-agency response which the social worker coordinates.

1.2 The Problem

Whilst working as an Independent Domestic Violence Advisor (IDVA), supporting women who were survivors of serious domestic abuse, I recognised that abused mothers with children who were the subject of a child protection plan were expected to behave in contradictory ways by the various professionals with whom they had relationships.

¹ HM Government *Working Together to Safeguard Children* (March 2015)

These mothers are expected by social workers to make choices to safeguard their children, which includes ending the relationship or severing contact with their abusive partner. This autonomous decision making is expected by social workers but may be very difficult for the mother following the control she has experienced within the abusive relationship. If she separates from the abuser and private family law proceedings ensue, she will be expected to agree to, and even facilitate, contact between her ex-partner and their children, which further undermines her autonomy. The demands placed on the mother in this situation are conflicting and impossible to fulfil. The purpose of this study is to examine the various relationships abused mothers have with professionals and with the legal system during the child protection and associated processes; to explore the mothers' experiences within these relationships, and to consider the question of how those relationships may work to support the mothers' abilities to make safe choices for themselves and their children.

It was the IDVA role which gave me a vantage point from which I was able to identify the various conflicting expectations being placed on the mothers I was supporting. The IDVA role was built upon an advocacy model which had previously been developed in North America. This model was designed to offer alternatives to fleeing to a refuge, instead focusing on helping the survivor access available community resources, enabling them to be safe within their own homes.² The purpose of the IDVA role is to closely support victims of domestic abuse who are faced with a high risk of death or serious injury. The priority of the role is to reduce this risk by advocating for the victim within a multi-agency setting to ensure the most suitable support is available to the victim and their

² Howarth, E, Stimpson, L, Barran, D and Robinson, A *Safety in Numbers: A Multi-Site Evaluation of Independent Domestic Violence Advisor Services* (2009) pp.24-25

children, whilst keeping them central to all safety planning.³ Whilst employed within this role I worked very closely with abused mothers who were at various stages of their involvement with social services. My experience of social workers' responses to families faced with persistent domestic abuse varied depending on the social worker assigned to the case. Child protection plans were inconsistent due to the disparate understandings of domestic abuse across the social work teams. Some of the social workers took more of an interest in the complexities of domestic abuse and this was evident in the child protection plans for which they were responsible. The majority of the child protection plans located the responsibility of ending the abusive relationship with the mother. Most of the plans indicated that the mother should leave the family home in order to end the relationship, and if she resisted this plan she was deemed as failing to protect her children. Invariably the mother was expected to attend support groups, counselling or mediation to demonstrate that *she* was endeavouring to end the abuse to which she was being subjected by her partner. Once separated, she was expected by social services to report any ongoing abuse to the police, despite fear of repercussions from her abuser. Post-separation, the mother was also expected to safeguard the welfare of her children whilst managing the expectations of the family courts to facilitate contact between her children and their abusive father, which the courts deemed as important in promoting the children's welfare. This expectation, of protecting her children whilst at the same time ensuring contact took place with the abuser, led to the mother's lack of trust in the system. This resulted in the mother removing herself from the child protection process which made it more difficult for social workers, and other professionals, to assist her to

³ Coy, M and Kelly, L *Islands in the Stream* (2011) p.25

protect herself and her children from harm. This often led to the increased involvement of social services and sometimes the removal of the children from the mother.

It was witnessing this range of conflicting expectations placed upon the mother, herself a victim of domestic abuse, which led me to question whether there could be a more effective way for all professionals within the child protection system to engage with and support the mother to make safe choices for herself and her children.

1.3 The Mother's Relationships

All human beings live their day to day lives within a web of relationships which come from a range of sources. Partners and friends are chosen; even when these relationships begin by chance, the choice to continue contact with one another and to develop an intimate and trusting mutual relationship is made by both parties. People also have conventional relationships, such as those with their children, family members and with work colleagues. These relationships are largely based on conventions, or unwritten rules, to which people generally conform. During different times in their lives people have relationships with various professionals which are imposed upon them; from their school teachers, to the midwives and health visitors who support them during maternity; or the police officer who attends their home to investigate after a burglary. These relationships are underpinned by statutory regulation and are dependent upon one party having the skills and knowledge required to assist the other party. Other relationships which are imposed may be punitive in their nature, for example police officers making arrests, probation officers ensuring adherence with prison release licence conditions or social workers assessing that a child should be removed from their parent's care. These relationships are also structured by statutory frameworks and an

imbalance of power in the relationship is clear; one party has the ability to sanction or coerce the other party to act in a particular way.

Throughout the child protection process the abused mother will have a variety of relationships, the majority of which are imposed upon her. The relationship she has with her abusive (ex)partner is complex because although it is a relationship she had chosen to enter into, the abusive behaviour of the perpetrator unbalances the power within the relationship making it unrecognisable from how the relationship was when it commenced.⁴ Indeed, the abusive behaviour of the perpetrator usually escalates after the mother commits to being in a relationship with him.⁵ At this point the relationship shifts from one of choice to one based upon coercion.⁶ The mother may not want the relationship itself to end, just for the abuse to stop. As Cavanagh describes, women in relationships with abusive men respond to the abuse in a variety of ways, for example depending on how many times they have been assaulted⁷ or how they respond to the apologies from their partner.⁸ This may be regarded by people outside of the relationship as the mother “choosing” to be a victim of abuse, but as I will explain in full in chapter three, a domestic abuse perpetrator ensures their victim believes that the abuse is her fault⁹ and that if she changes her behaviour the abuse will end.¹⁰ As Evan Stark explains, the abuser uses coercive control as a strategy which is “invisible in plain

⁴ Pain, R *Everyday Terrorism: How Fear Works in Domestic Abuse* (2012)

⁵ Hayes, S and Jefferies, S “Romantic Terrorism? Survivor Narratives of Psychological and Emotional Tactics of Domestic Violence” *Stop Domestic Violence Conference* Canberra (2015) pp.6-8

⁶ Stark, E *Coercive Control: How Men Entrap Women in Personal Life* (2007)

⁷ Cavanagh, K “Understanding Women’s Responses to Domestic Violence” *Qualitative Social Work* 3 (2) (2003) p.234-235

⁸ *Ibid* p.244

⁹ Hearn, J “Men’s Violence to Known Women: Historical, Everyday and Theoretical Constructions By Men” in Fawcett, B, Featherstone, B, Hearn, J and Toft, C *Violence and Gender Relations: Theories and Interventions* (1996) pp.22-37

¹⁰ Cavanagh, above n 7 p.238

sight.” It is therefore necessary to ascertain what the abuser has prevented the mother from doing, in order to identify the control he has over her.¹¹ The mother will continually adapt her behaviour to satisfy the abuser in the hope that the abuse will end. Yet the abuser will continually “move the goalposts” so that her behaviour is never quite right. She may also be fearful of post separation violence,¹² hence staying in the relationship may feel like the safest option; indeed, perpetrators of domestic abuse rarely “allow” their partners to simply end the relationship.¹³

The mother’s relationship with her child is central to the child protection process itself. The mother may or may not have chosen to become a parent, so it cannot be assumed that this relationship is one of choice,¹⁴ especially if the child’s conception was the result of a rape or forced pregnancy.¹⁵ The relationship the child has with their father, if the father is the mother’s abusive partner, makes the mother’s relationship with the child particularly precarious. The child may wish to pursue a relationship with their father despite the violence he has inflicted on their mother.¹⁶ Indeed even if the child does not want to pursue a relationship with their father, abusive men often enforce child contact as a form of control over the child’s mother; this will be discussed in detail in chapter three. The mother may have remained within the abusive relationship in an attempt to “make the relationship work” because they believed their child needed to be raised by

¹¹ Stark, above n 6 p.13

¹² Humphreys, C and Thiara, R “Neither Justice Nor Protection: Women's Experiences of Post-Separation Violence” *Journal of Social Welfare and Family Law* 25 (3) (2003) pp.195-214

¹³ Alaniz, R and De Los Santos, E “Domestic Violence: It Can Happen to Professional Women Including Educators” *International Journal of Education and Social Justice* 2 (12) (2015) pp.1-10

¹⁴ Marshall, J and O’Donovan, K “After Birth: Decisions About Becoming a Mother” in Diduck, A and O’Donovan, K *Feminist Perspectives on Family Law* (2006) p.103

¹⁵ Pallitto, C et al. “Intimate Partner Violence, Abortion, and Unintended Pregnancy: Results from the WHO Multi-country Study on Women's Health and Domestic Violence” *International Journal of Gynaecology and Obstetrics* 120 (1) (2013) pp.3-9

¹⁶ Fleury-Steiner, R E, Miller, S L, Maloney, S and Bonistall Postel, E “‘No Contact, Except...’ Visitation Decisions in Protection Orders for Intimate Partner Abuse” *Feminist Criminology* 11 (1) (2016) pp.3-22

two parents. Prevailing conventional notions about mothers as primary caregivers¹⁷ result in the expectation that she is responsible for the child's safety; this will be discussed further in chapter two. Furthermore, and as will be discussed in detail in chapter six, the mother's continued relationship with the abuser following her fleeing the abuse may also be enforced due to the requirements of family courts for the mother to encourage, and even facilitate, contact between the child and their abusive father.¹⁸

The only relationship with professionals within the child protection process which is non-statutory is the relationship the mother has with her IDVA, which should be entered into voluntarily by the mother.¹⁹ This can become problematic when other professionals within the child protection system conclude that the mother needs to work with an IDVA and proceed to include this within the family's child protection plan. The relationship then becomes imposed upon the mother.²⁰ A prominent feature of the IDVA's role is their attendance and engagement in the Multi-Agency Risk Assessment Conference (MARAC). This periodic meeting is held to discuss victims of abuse who are faced with a high risk of death or serious injury.²¹ The MARAC is attended by various statutory agencies who have responsibility for the wellbeing of their communities; for example, police, social services, health representatives, education representatives, probation and

¹⁷ See Diduck, A "The Unmodified Family: The Child Support Act and the Construction of Legal Subjects" *Journal of Law and Society* 22 (4) (1995) pp.527-548, and Phoenix, A "Social Constructions of Lone Motherhood: A Case of Competing Discourses" in Silva, E B (ed) *Good Enough Mothering? Feminist Perspectives on Lone Motherhood* (1996)

¹⁸ Smart, C "The Legal and Moral Ordering of Child Custody" *Journal of Law and Society* 18 (4) (1991) pp.485-500

¹⁹ Coy and Kelly, above n 2 p.3

²⁰ James-Hanmen, D "Enhancing Multi-Agency Work" in Hanmer, J and Itzin, C (eds) *Home Truths About Domestic Violence: Feminist Influences on Policy and Practice, A Reader* (2000) pp.269-286

²¹ Robinson, A *Domestic Violence MARACs (Multi Agency Risk Assessment Conferences) for Very High-Risk Victims in Cardiff, Wales: A Process and Outcome Evaluation* (2004)

social housing providers.²² The IDVA attends this meeting to include the voice of the victim within the discussions. The mother's relationship with the MARAC process is imposed, but as I will explain in later chapters, she does not have direct involvement with the process as she is not invited to the meeting²³ and at times has no knowledge of the discussion which has occurred about her and her family. Her relationship with the MARAC is dependent upon her relationship with the IDVA; in this situation the IDVA is the mother's link to the MARAC and if the mother has chosen not to enter into a relationship with the IDVA she will have no control over her relationship with the MARAC process. If the mother does engage with the IDVA, she is dependent on the IDVA accurately conveying her wishes and feelings to the meeting in her absence.

The most fundamental relationship the mother has throughout the child protection process is with her family's social worker. This is a relationship which is imposed upon the mother and can operate on a spectrum from supportive to punitive towards her.²⁴ The social worker should have the knowledge and skills to assist the mother;²⁵ however the relationship is structured by the Children Act 1989 and is therefore underpinned by the coercive presence of child protection law. The mother's relationship with the police is structured by the statutory framework of the criminal law. She may choose to engage with the police by calling them for assistance during a violent incident,²⁶ or she may have

²² Steel, N, Blakeborough, L and Nicholas, S "Supporting High-Risk Victims of Domestic Violence: A Review of Multi-Agency Risk Assessment Conferences (MARAC)" *Home Office Research Report* 55 (July 2011)

²³ *ibid*

²⁴ Hughes, J, Chau, S and Poff, D "'They're Not My Favourite People' What Mothers Who Have Experienced Intimate Partner Violence Say About Involvement in the Child Protection System" *Children and Youth Services Review* 33 (2011) pp.1084-1089

²⁵ As set out in the British Association of Social Workers' Professional Capabilities Framework. Available <<https://www.basw.co.uk/pcf/capabilities/?level=5&domain=5#start>> Accessed 29th January 2016

²⁶ Stewart, A "Policing Domestic Violence: An Overview of Emerging Issues" *Police Practice and Research: An International Journal* 2 (2001) p.457

police intervention imposed upon her when a third party makes an emergency call without her knowledge or involvement.²⁷ The relationship may become complex if the mother chooses to retract her statement after the emergency is over or if she refuses to support the prosecution of her partner or ex-partner. At times this can lead to the involvement of police being imposed upon the mother.²⁸ The mother's engagement with family law proceedings is also one which she may have chosen, for example if she wishes to obtain a civil order to protect herself from the abuser,²⁹ or if she wishes to formalise child contact arrangements at court in respect of her child.³⁰ However, as will be discussed in chapter six, the mother's involvement with the family law process is very often controlled by her abusive ex-partner by means of his applications for child arrangement orders.³¹ In these situations the mother's relationship with the family law process is imposed upon her; the process can be punitive and in many cases dangerous.³² Marianne Hester's study of the "Three Planets" of domestic abuse, child protection and child contact examined the tensions between the different approaches taken by practitioners on each of these planets. Hester describes the resulting "systematic contradictions;" arguing that on the domestic abuse planet the mother may have called police and supported a prosecution of her partner, on the child protection planet she may have left her partner following instruction from the social worker, yet

²⁷ Hoyle, C and Sanders, A "Police Responses to Domestic Violence: From Victim Choice to Victim Empowerment?" *British Journal of Criminology* 40 (2000) pp.14-36

²⁸ Ellison, L "Prosecuting Domestic Violence without Victim Participation" *The Modern Law Review* 65 (6) (2002) pp. 834-858

²⁹ Sendall, J *Family Law* (9th Ed) (2018) pp.383-411

³⁰ *ibid* pp.254-305

³¹ Hester, M, Pearson, C and Harwin, N *Making an Impact: Children and Domestic Violence* (2nd Ed) (2007) p.56

³² Humphreys, C and Thiara, R "Neither Justice Nor Protection: Women's Experiences of Post-Separation Violence" *Journal of Social Welfare and Family Law* 25 (3) (2003) p.207

on the child contact planet she is ordered to allow contact between the child and her ex-partner.³³

1.4 The Mother's Autonomy

*"Freedom from external control or influence; independence"*³⁴

To think or behave autonomously is to make decisions for oneself. The concept of autonomy will be the focus of my study because it is the capacity to think and act autonomously that is required by the abused mother in order to take control of her own life and to make decisions about her relationships. She needs to navigate the labyrinth of services and manage relationships with a variety of professionals, who all have different expectations, processes and rules. She must do this whilst also managing the relationship with her abuser, whether they are separated or still living together.

Feminist scholars have questioned the ability of mothers to truly act autonomously due to the connection they have with their children.³⁵ They have argued that mothers cannot simply pursue their own self-interests or make purely individual choices. Indeed, as the complexities above indicate, decisions the mother makes about her life often rest on how these decisions will affect her child. Motherhood itself carries a value within society with judgement being based upon factors such as; the mother being physically

³³ Hester, M "The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence" *British Journal of Social Work* 41 (2011) pp.837-853

³⁴ Oxford English Dictionary

³⁵ See Flax, J "The Conflict Between Nurturance and Autonomy in Mother-Daughter Relationships and Within Feminism" *Feminist Studies* 4 (2) (1978) pp.171-89; Rich, A *Of Woman Born: Motherhood as Experience and Institution* (1976); Ruddick, S "Maternal Thinking" *Philosophy, Children and Family* 1 (1982) pp.101-126

present;³⁶ whether the mother chooses to continue to work after becoming a parent;³⁷ or whether the mother gives up all social identity in favour of motherhood.³⁸ Being a mother requires a myriad of (often difficult) decisions, even without the additional complexities that domestic abuse brings to the family setting. As will be discussed in detail in chapter four, the child protection plan itself is centred on how well the mother is able to protect her child. As Dorothy Roberts explains, it is predominantly mothers who are held responsible for the abuse of children, there being a presumption that a “woman’s maternal instinct will always prevail over the harmful aspects of her children’s lives.”³⁹

Once within the child protection system the mother’s autonomy is compromised yet expected. Social workers require her to exercise her autonomy to end her relationship; family courts disregard her as an individual with the right to autonomy and instead concentrate on a particular understanding of the child’s welfare which prioritises the child’s ongoing relationship with both parents, yet expect her to engage in contact with her ex-partner as an equal; the MARAC process is closed to her as an individual, instead centring around the professionals involved with the process and therefore offers no opportunity for her to exercise her autonomy; and police processes are centred on the prosecution of the perpetrator. The additional complexity affecting all of the above relationships is the fact that the mother’s abusive relationship would have already eroded her ability to act autonomously. The very nature of domestic abuse hinges on

³⁶ Sanger, C “Leaving Children for Work” in Hanigsberg, J and Ruddick, S *Mother Troubles* (1999) p.100

³⁷ Jamieson, K *Beyond the Double Bind: Women and Leadership* (1995)

³⁸ Roberts, D “Mothers Who Fail to Protect Their Children” in Hanigsberg, J and Ruddick, S *Mother Troubles* (1999) p.37

³⁹ *Ibid* p.36

the exercise of “power and control”,⁴⁰ where the abuser ensures he has all of the power in the relationship by exercising complete control over his partner. The abused mother would have had no opportunity to act autonomously during this relationship, only to find herself within the child protection process and thrust into a web of relationships in which acting autonomously is expected by some yet simultaneously disregarded by others.

1.5 Literature Review

There is an extensive body of research available about domestic abuse, including research into its nature⁴¹ its effect on women⁴² and on children,⁴³ as well as policy responses to domestic abuse⁴⁴ and the policing of domestic abuse,⁴⁵ domestic abuse and housing issues,⁴⁶ the services available to victims of abuse,⁴⁷ and their experiences of accessing these services.⁴⁸ There has been research conducted into the relationships

⁴⁰ Pence, E and Paymar, M *Power and Control: Tactics of Men who Batter* (1986)

⁴¹ E.g. Johnson, M P and Ferraro, K. J “Research on Domestic Violence in the 1990s: Making Distinctions” *Journal of Marriage and Family* 62 (2000) pp.948-963

⁴² E.g. Campbell, J “Health Consequences of Intimate Partner Violence” *The Lancet* 359 (9314) (2002) pp.1331-1336

⁴³ E.g. Radford, L and Hester, M *Mothering Through Domestic Violence* (2006) pp.66-82

⁴⁴ Harwin, N and Barran J “Domestic Violence and Social Policy; Perspectives from Women’s Aid” in Hanmer, J and Itzin, C (eds) *Home Truths About Domestic Violence: Feminist Influences on Policy and Practice, A Reader* (2000) pp.205-227

⁴⁵ Her Majesties Inspectorate of Constabulary *Everyone’s Business: Improving The Police Response to Domestic Abuse* (2014) and Her majesties Inspectorate of Constabulary *Increasingly Everyone’s Business: A Progress Report on the Police Response to Domestic Abuse* (December 2015)

⁴⁶ Morley, R “Housing and Domestic Violence” in Hanmer, J and Itzin, C (eds) *Home Truths About Domestic Violence: Feminist Influences on Policy and Practice, A Reader* (2000) pp.228-246

⁴⁷ McGee, C “Children’s and Mothers’ Experiences of Support and Protection Following Domestic Violence” in Hanmer, J and Itzin, C (eds) *Home Truths About Domestic Violence: Feminist Influences on Policy and Practice, A Reader* (2000) pp.77-95

⁴⁸ Spruin, E, Alleyne, E, Papadaki, I “Domestic Abuse Victims’ Perceptions of Abuse and Support: A Narrative Study” *Journal of Criminological Research, Policy and Practice* 1 (1) (2015) pp.19-28

between abused mothers and social workers,⁴⁹ police⁵⁰ and the family courts,⁵¹ as well as post-separation violence,⁵² violence during pregnancy,⁵³ and the behaviour of domestic abuse perpetrators.⁵⁴ However, very few of these studies take the perspective of an abused mother, and there is very little research utilising the concept of autonomy. Hester's Three Planets study concentrates on the practices of professionals working with the abused mother and the abuser but does not address the experiences of the mother within the system. Robinson and Howarth's study of IDVAs' risk assessment practices found that IDVAs used their professional judgement when assessing risk, whilst also taking particular notice of the victims' perceptions of their own situations.⁵⁵ However, the study did not take into account the experiences of those being risk assessed. Hilary Abrahams' series of studies into the experiences of women living in a refuge after fleeing abuse, offers an enhanced understanding of the impact of domestic abuse on the emotional wellbeing of victims and their ability to recover.⁵⁶ The framework developed by Abrahams acknowledges the positive agency of each woman alongside the need for a supportive community and offers a model of loss and recovery to assist the women to rebuild their lives in a new community. The women's voices are clear throughout these studies, however they do not explicitly concentrate on the women's independent

⁴⁹ Keeling, J and Van Wormer, K "Social Worker Interventions in Situations of Domestic Violence: What we can Learn from Survivors' Personal Narratives?" *British Journal of Social Work* 42 (2012) pp.1354-1370

⁵⁰ Hunter, G, Jacobson, J and Kirby, A *Victims of Domestic Abuse: Experiences of the Police* (March 2015)

⁵¹ Fleury-Steiner et al. above n 16

⁵² Humphreys and Thiara, above n 32 p.201

⁵³ Mezey, G and Bewley, S "Domestic Violence and Pregnancy" *British Journal of Obstetrics and Gynaecology* 104 (5) (1997) pp.528-531

⁵⁴ Williamson E "Living in the World of the Domestic Violence Perpetrator: Negotiating the Unreality of Coercive Control" *Violence Against Women* 16 (12) (2010) pp.1412-1423

⁵⁵ Robinson, A L and Howarth, E "Judging Risk: Key Determinants in British Domestic Violence Cases" *Journal of Interpersonal Violence* 27 (8) (2012) pp.1489–1518

⁵⁶ Abrahams, H *Supporting Women After Domestic Violence: Loss, Trauma and Recovery* (2007)

thoughts or actions; rather there is an emphasis on what is needed for them to recover from the trauma. Keeling and Van Wormer's study of abused mothers' experiences of the child protection system embraces feminist standpoint epistemology and culminates in a call for a shift in social work practice to move towards a "family centred model".⁵⁷ They argue for more supportive relationships between mothers and social workers, whilst touching upon the need for the mothers to feel empowered within these relationships in order to make changes for themselves. This study does not explicitly examine the concept of the mother's autonomy. These studies are a sample of research which has examined domestic abuse victims' relationships with practitioners. There is an apparent lack of research into the experiences of abused mothers where the concept of autonomy is central to the findings. As described above, I believe the mother's ability to exercise her autonomy is vital to her experiences with the number of different relationships she is expected to navigate in the child protection process. It is for this reason that I have chosen to make autonomy central to my analysis; and specifically, the concept of relational autonomy which I will introduce in chapter two.

Ultimately, the mother's ability to think and act autonomously is vital for her to successfully navigate the various expectations placed upon her during the child protection process, in such a way which may lead to her being free from abuse, whilst simultaneously avoiding any outcomes which are punitive to her and her children. For this to be possible professionals need to have a firm understanding of the dynamics and complexity of domestic abuse, whilst giving the mother space to make her own choices. As Hester argues, professionals also need to have an understanding of the practices of

⁵⁷ Keeling and Van Wormer above n 49

the other professionals in the mother's relationships, and how these practices can create conflicting expectations for the mother which place her in an impossible position.⁵⁸ It is this impossible position which leads to the mother not making any new choices and instead being seen to "choose" to continue the abusive relationship.

There is an assumption to be addressed at this point, that if the mother were to act autonomously she would choose to end the abusive relationship. As mentioned above the aspiration for victims of domestic abuse is for the abuse to end, not necessarily for the relationship to end. However, the nature of domestic abuse is that it does not allow space for autonomous thought or behaviour on the part of the victim. Therefore, theoretically, if the victim were to begin to act autonomously it would be the end of the abuse within the relationship, even if it was not the end of the relationship. In reality it is well documented that when a victim of abuse begins to exercise control over her own life, the perpetrator escalates their abusive behaviours to tip the balance of power back in their favour.⁵⁹ It is therefore generally safer for the relationship to end completely; although it is also well documented that post separation a victim of domestic abuse faces a higher risk of harm.⁶⁰ This is why many women stay in a relationship with their abuser.⁶¹ However if they were able to choose it would be for the abuse to end. Faced with the chance to be free from abuse no-one would choose to continue to be subjected to it; the very essence of the presence of *real* choice negates the presence of serious and enduring domestic abuse. The assumption that the mother would exercise her

⁵⁸ Hester, above n 33 p.850

⁵⁹ Craven, P *Living with the Dominator* (2008)

⁶⁰ Brownridge, D A "Violence Against Women Post Separation" *Aggression and Violent Behaviour* 11 (5) (2006) pp.514-530

⁶¹ Murray, S "'Why Doesn't She Just Leave?' Belonging, Disruption and Domestic Violence" *Women's Studies International Forum* 31 (1) (2008) pp.65-72

autonomy to end the abuse if she were able is therefore a correct one; this may however mean having to end the relationship as she has no control over the behaviour of the perpetrator. It may take victims of abuse some time to recognise that the abuse may not end whilst the relationship continues⁶² and that their behaviour will make no difference to the abusive behaviours of the perpetrator.⁶³ It is at the point when the victim realises that her only option for ending the abuse is to end the relationship that she is able to exercise her autonomy; until then she is not independent of the abuser and will continue to be “programmed” to think as he thinks.⁶⁴

Autonomy for the mother is therefore not an end in itself, but a means to an end, where the mother is empowered to make choices. To be offered the tools and to be encouraged to develop the ability to think for herself, can lead to her actually making choices which include moving herself away, physically and emotionally, from the harmful relationship. I have observed that once a victim of domestic abuse has made this choice for herself she is less likely to return to the abusive relationship.

1.6 Methodology

This thesis aims to examine the relationships the mother has within the child protection process and asks to what extent these relationships foster or negate her autonomy; and if it is the latter how can the relationship be restructured in order to better foster her autonomy. To enable an examination of the mothers’ relationships, it was necessary for me to undertake empirical research which allowed me to obtain the views of everyone

⁶² SafeLives *Getting it Right First Time* (2015) Available
<<http://www.safelives.org.uk/sites/default/files/resources/Getting%20it%20right%20first%20time%20-%20complete%20report.pdf>> Accessed 2nd July 2018

⁶³ Craven, above n 59

⁶⁴ Stark, above n 6 p.112-132

involved within the process, and specifically to obtain evidence from mothers who were personally affected by domestic abuse and the child protection system. By contrast, Hester's Three Planets study concentrates on the policies relevant to each "planet" along with a review of the current literature, rather than examining the experiences of those inhabiting the planets. Similarly, Strega and Janzen's examination of how "failure-to-protect" policies may affect abused mothers does not take into account the thoughts and feelings of the mothers these policies directly affect.⁶⁵ In order to determine how the relationships within the child protection process affect the mothers' ability to think or act autonomously it is imperative to ask the mothers about these relationships. It is not enough to examine the policies of the organisations working with the mothers during the process, or even to merely examine the case files created by the professionals during the process.

The use of surveys would have been insufficient to thoroughly examine the experiences of mothers, as there is a requirement when designing surveys to keep them easy and quick to complete,⁶⁶ therefore survey questions allowing short answers are more suitable. Surveys would exclude the chance for clarification and discussion with the mother; interviews allow for this exploration.⁶⁷ In order to gather the depth of data required to answer my research questions, I therefore undertook interviews with abused mothers involved in the child protection process.⁶⁸ Since it is the mother's autonomy with which this study is concerned, her voice should be central to the

⁶⁵ Strega, S and Janzen, C "Asking the Impossible of Mothers: Child Protection Systems and Intimate Partner Violence" in Strega, S et al. (eds) *Failure to Protect* (2013) pp.49-76

⁶⁶ Yin, R *Case Study Research: Design and Methods* (2014) pp.6-7

⁶⁷ Reinharz, S *Feminist Methods in Social Research* (1992) p.18

⁶⁸ See Appendix One for interview schedule

research. Boyd's study of motherhood and autonomy⁶⁹ examines the socio-legal shifts in the treatment of single mothers who have chosen to have a child and raise them without a co-parent. The study uses mixed methodology which culminates in a series of interviews with mothers about their experiences of legislation and policy specific to lone parents. The mothers' voices are evident throughout the extended study. In their study of the personal narratives of survivors of abuse, Keeling and Van Wormer argue that for the abused mother's circumstances to be understood by professionals, first they must be known.⁷⁰ I too was keen to obtain mothers' views of their own personal realities and I therefore adopted a semi-structured approach.⁷¹ The interview began with an ice breaker style question,⁷² designed to put the mother at ease whilst discussing familiar territory. Following this, prompts were available for my guidance only. As Susan Yeadle explained when describing her study into the working lives of women, "[they] are always ... encouraged to "digress"; much important information was gathered in this way..."⁷³

In order to begin to understand to what extent each of the relationships the mother has may foster or negate her autonomy, it was also important to examine each relationship from both sides rather than simply concentrating on the mother's experience of the relationship. Although Caroline McGee's study of support provided to mothers and their children following domestic abuse takes into consideration the mother's views of the various professionals with whom she finds herself involved, there is no corresponding

⁶⁹ Boyd, S et al. *Autonomous Motherhood? A Socio-Legal Study of Choice and Constraint* (2015)

⁷⁰ Keeling and Van Wormer, above n 49 p.1356

⁷¹ Reinharz, above n 67

⁷² *ibid* p.25

⁷³ Yeadle, S *Working Women's Lives: Patterns and Strategies* (1984) p.46

examination of the views of the professionals.⁷⁴ Radford and Hester's series of studies into children's contact with their abusive fathers included interviews with survivors, surveys of court welfare staff and interviews with social workers. However, whilst this body of work illustrates the journey of domestic abuse as a policy matter since the 1980s, there is no common thread running through. For example, the social workers interviewed in the later study⁷⁵ were not the allocated workers for the mothers interviewed in the earlier study.⁷⁶ There appears to be a lack of research which can be recognised as getting 'both sides' of the story.

As discussed above, the mother also has to navigate a whole range of professional involvement with her family during the child protection process. Hoyle and Sanders' study of police responses to domestic abuse provides an insight into the experiences of police officers when responding to domestic abuse.⁷⁷ Her Majesty's Inspectorate of Constabulary (HMIC) conducted a study in 2014 to determine the effectiveness of police responses to domestic abuse.⁷⁸ They spoke to 70 victims in focus groups and obtained 500 online surveys, alongside 200 surveys from professionals working with domestic abuse victims and data collected from files across 43 policing districts. This study is a good example of a mixed methods approach, obtaining different perspectives on the same issue. However, the HMIC study did not attempt to obtain corresponding

⁷⁴ McGee, C "Children's and Mothers' Experiences of Support and Protection Following Domestic Violence" in Hanmer, J and Itzin, C (eds) *Home Truths About Domestic Violence: Feminist Influences on Policy and Practice, A Reader* (2000) pp.77-95

⁷⁵ Hester, M, Pearson, C and Radford, L *From Periphery to Centre: Domestic Violence in Work with Abused Children* (1998)

⁷⁶ Dominy, N. and Radford, L *Domestic Violence in Surrey: Towards an Effective Inter-Agency Response* (1996)

⁷⁷ Hoyle and Sanders, above n 27

⁷⁸ Her Majesty's Inspectorate of Constabulary *Everyone's Business: Improving the Police Response to Domestic Abuse* (2014)

experiences of the same events. By examining the case-notes of the professionals involved with the mother, I aimed to obtain the 'whole story' with perspectives from each participant in each relationship.

As historian Berenice Carroll warns; "Theory must remain at best hypothetical, at worst unreal and barren [unless we have detailed] case studies..."⁷⁹ Case studies can illustrate an idea and pose provocative questions.⁸⁰ The use of case studies allows exploration of the "how" and "why" questions⁸¹ relevant to my thesis; enabling a depth of understanding of the mothers' experiences. Therefore, although I only conducted a small number of case studies, the outcomes of which cannot be described as representative, I was able to gather a very rich set of data from each of the studies. The use of the case study method also allowed an adjustment of the model for each case study depending on which professionals were involved in each mother's specific "case".

I obtained ethical approval from the University of Kent's Law School Research Ethics Advisory Group on 25th September 2013; this was endorsed by Queen Mary's Ethics of Research Committee on 3rd October 2014. The case studies were carried out between January 2014 and September 2015. The mothers I wanted to speak to were potentially vulnerable due to their circumstances, so to ensure a safe recruitment process for the study I enlisted the assistance of professionals who would have knowledge of each mother's situation. I initially spoke about the proposed study with teams of social workers and with domestic abuse professionals at their team meetings and asked them to identify and contact mothers who they believed to be separated from their abusive

⁷⁹ Carroll, B (ed) *Liberating Women's History: Theoretical and Critical Essays* (1976) p.xii

⁸⁰ Reinharz, above n 67 p.167

⁸¹ Yin, above n 66 pp.6-7

partners. I proposed only to speak with mothers who were no longer in violent relationships in order to reduce the risk to the mothers of their abusive partner finding out that they had spoken to me. As I will explain in chapter three, abusive men do not allow their partners to move freely, therefore a mother living within this controlled environment would not be safe to come and speak with me without being questioned and possibly followed by her abusive partner. The mothers were then recruited through an “opt in” method, where information about the study was passed to them via their domestic abuse support worker, IDVA or social worker.⁸² A message was passed to me to call them if they were interested in taking part in the study. Three of the mothers contacted me themselves to arrange an interview. Upon meeting with each mother, I obtained a signed consent form indicating her agreement to participate in the research.⁸³ I recruited eight mothers in total.

To keep the mother’s voice central to the case study I interviewed her first in each case. The information she gave me indicated which agencies she had been involved with and from this starting point I arranged an interview with the allocated social worker⁸⁴ and, with the mother’s permission, obtained case files from all other relevant agencies. The decision to only interview social workers about specific cases, and instead to obtain relevant paperwork from all of the other organisations was made due to specific considerations relating to each group of professionals. I was not permitted by the police legal services department to interview police officers about specific cases. Likewise, it was not possible to interview solicitors about individual cases as this would involve a

⁸² See Appendix Two for copy of information sheet

⁸³ See Appendix Three for a copy of consent form

⁸⁴ See Appendix Four for the social worker’s interview schedule

breach of client confidentiality and legal professional privilege. Despite my management role within a domestic abuse charity placing me in a privileged position to engage with subjects who would traditionally be hard to recruit for research,⁸⁵ as a manager of IDVAs I believed interviewing IDVAs could potentially be a conflict of interests.⁸⁶ I did not believe that I would not be regarded as a neutral observer by the IDVAs involved. I intended to make an audio recording of the MARAC meetings.

In order to obtain charge sheets, emergency call logs and crime reports from the police I had to complete a Subject Access Request⁸⁷ which limited the information I could obtain to include only the applicant. As a result, the police files obtained had large areas blacked out where information about anyone other than the mother appeared. Where the mothers had been involved with family law proceedings, I obtained their own copies of court paperwork, which included some reports written for court, correspondence between solicitors, mothers and their children's fathers, copies of forms completed, court directions and court orders. I obtained the case notes and risk assessments from the domestic abuse services; and from the social work departments I obtained case notes, forms and correspondence, completed family assessments and minutes from case conferences and core groups. Due to the nature of the cases the MARAC meetings had already been conducted by the time I interviewed the mothers. I therefore obtained MARAC minutes in place of recording the conferences. In order to set some context for the police involvement I interviewed police officers who were working in the field of

⁸⁵ Bano, S "'Standpoint', 'Difference' and Feminist Research" in Banaker, R and Travers, M *Theory and Method in Socio-Legal Research* (2005) pp.99-100

⁸⁶ Israel, M "Research Ethics and Integrity in Sociolegal Studies and Legal Research in McConville, M and Chui, W H *Research Methods for Law* (2017) p.194

⁸⁷ The Data Protection Act (1998)

domestic abuse in the mothers' local area⁸⁸ about the general police responses to domestic abuse. I also interviewed solicitors about their involvement with family law cases where domestic abuse was a factor, again this was to add context and was not a discussion about specific cases.⁸⁹ The following chart identifies the code assigned to each of the professionals I interviewed, along with the ranks of the police officers.

Professional interviewed	Code assigned
Police Constable	P1
Detective Inspector	P2
Detective Sergeant	P3
Solicitor	S1
Solicitor	S2
Solicitor	S3

My original intention was to carry out five case studies. This was due to time constraints; as a part time PhD student I also had to fit in full time employment and I felt I had to be realistic about the scope of the study. However, after interviewing five mothers it became clear that there was a lack of a family law perspective, so I recruited three more mothers who had been heavily involved in contact disputes through the family courts.

My first interviewee, M1 chose not to continue with the study beyond my initial conversation with her; hence the coding in the table below begins at M2. Upon interviewing each mother, I obtained their signed consent to speak to their social worker and to access their agency files. Following the interview, I contacted their allocated social worker and conducted an interview with them. I was able to interview the allocated social worker for seven of the mothers. In order to obtain the social worker's

⁸⁸ See Appendix Five for police interview schedule

⁸⁹ See Appendix Six for solicitor interview schedule

paperwork the mother was required to complete a form SARv11-2015, as the social services department would not accept the consent form I had provided with the mother's signature. Similarly, the police department did not accept the signed consent form, instead requiring the mother to complete a form 2902B to obtain her paperwork. I was made aware of this after completing the interviews, along with the need to provide payment to the respective departments in the form of a postal order. After failing at attempts to make further contact with two of the mothers by telephone, I sent them letters with the SARv11-2015 and 2902B forms, postal orders, stamped addressed envelopes and instructions for signing and returning the forms. I followed this up with visits to their homes, but I was unable to contact them. I concluded from this lack of engagement that both mothers had withdrawn their consent for continued involvement with the study. Unfortunately, these two mothers had been involved with family law proceedings and I was therefore also unable to obtain their family law paperwork. The mothers gave me permission to access their MARAC minutes; additionally, I obtained consent from the MARAC Coordinator to access these minutes. The mothers also gave permission for me to access their case notes from the advocacy services; copies of the case notes were provided by the IDVAs involved with each mother.

The following chart illustrates which agencies were involved with each mother, along with the paperwork I was able to acquire:

	Social services		Police		MARAC		Family Law		Advocacy services	
	Involved	Paperwork received	Involved	Paperwork received	Involved	Paperwork received	Involved	Paperwork received	Involved	Paperwork received
M2	X	X	X	X	X	X			X	X
M3	x	X	X	X	X	X			X	X
M4	X	X	X	X	X	X			X	X
M5	X	X	X						X	X
M6							X	X	X	X
M7	X		X				X		X	X
M8	X		X				X		X	X
M9	X	X	X	X			X	X	X	X

1.7 Data Analysis

Once the interviews had been conducted and transcribed, and the relevant case files obtained, I began to examine them for common themes. In chapter two I will introduce the concept of relational autonomy and the framework used to determine if a relationship is supportive of the mother's autonomy. This framework includes the identification of forces and practices within each relationship. I transcribed the interviews myself; this gave me the opportunity to start thinking about any themes emerging as I was typing up the interviews. I then read through the interview transcripts thoroughly, highlighting the common themes that had been apparent even whilst I conducted the interviews, and had emerged again during the transcribing exercise. It was clear from the mothers' interviews that their experiences of each relationship had common themes of power relations between themselves and the professionals they were engaging with. The same themes of power were apparent from interviews with the social workers. These themes encompassed "expertise", "coercion" and "gendered" expectations, and made up the structuring forces within each of the relationships. I then examined the paperwork for all of the relationships and methodically read through them in groups of the same relationship. For example, I examined all of the police files, then all of the social work files. I was able to highlight evidence of the power relations described by the mothers in their interviews.

The final stage of the relational autonomy framework requires the identification of practices within each relationship. I therefore returned to the mothers' interviews to examine their experiences of the day to day interactions with each of the groups of professionals. I also returned to the social workers' interviews and highlighted areas

where they discussed their specific approaches to working with the mothers. This provided a whole raft of data which I was able to organise into specific themes, after spending a great deal of time reading through the paperwork, again grouped into relationships, highlighting where there was evidence of the practices the mothers had identified in their interviews. From this thorough examination of the paperwork and cross referencing with the mothers' interviews I was able to construct a framework of three emerging themes, each running through the practices within all of the relationships. I then re-read the case files, with these main themes firmly in mind. Using a separate note book for each relationship and under separate thematic headings, I noted all of the occurrences of these main themes for each of the relationships. These main themes of "choice", "consistency" and "knowledge" formed the "practices;" where "choice" refers to the extent to which the mother was afforded choices in the relationship, consistency refers to the responses she received from professionals and knowledge refers to the level of understanding of domestic abuse exhibited by the professionals. These themes are applied within the relational autonomy framework, throughout the remaining chapters of this thesis. Each of the mothers' relationships forms a chapter. As a multi-agency process, the MARAC is included in various chapters where the involvement of the professional specific to that chapter is discussed. The mothers' relationship with protective civil orders is also discussed in the chapters relating to the professionals who are involved with the application process, and any subsequent breaches of the order.

1.8 Chapter Outlines

Chapter two introduces the theoretical frameworks relevant to the thesis. The concept of autonomy is introduced and the theory of relational autonomy is offered as a more appropriate alternative to the traditional reading of autonomy as atomistic freedom of self-determination. The theory of relational autonomy recognises that it is possible for individuals to think or act autonomously within the inevitable web of relationships which all human beings live amongst; and furthermore, possessing or developing the ability to think or act autonomously is dependent on the quality of the relationships we form. The relational autonomy framework will be explained, and some examples given of how this framework can be applied to everyday circumstances. The basis of this framework is that within each relationship setting there are forces which structure the relationship; and practices which either mitigate or exacerbate these structuring forces. The forces identified in the relationships I studied fall into three main categories: juridical power, biopower and gender. Juridical power is recognised as the coercive power of the state which is exercised through the legal system; for example through legal commands and prohibitions. Biopower is recognised as a shift from coercive, disciplinary power; towards a system of controlling populations through the application of knowledge and norms of behaviour. Gendered forces are recognised where the ideological view of the mother reduces her opportunities whilst increasing the expectations placed upon her to conform to the motherhood norm. The chapter will introduce and explain these structuring forces.

Chapter three begins by situating the mother's abusive relationship in the context of the relational autonomy framework; positioning the relationship within the private family

setting, then identifying the structuring forces of this setting as privacy, dependency and the gendered division of labour. The abusive behaviours of the perpetrator are identified as the practices within this setting. These practices exacerbate the uneven balance of power already present in the private family setting. The chapter will continue with an overview of the advocacy services available to survivors of domestic abuse. The relationship between the mothers in my study and their domestic abuse advocate will then be examined through the relational autonomy lens. The settings for this relationship are largely neutral, away from the home, but also away from formal office settings. The structuring forces identified in this setting are biopolitical forces, in which the advocate is an expert on risk, the management of risk and on the mother as a victim of domestic abuse.

Chapter four moves on to consider the relationship between the mother and her family's social worker. As the social worker's role is underpinned by legislation, the chapter begins with the statutory framework for child protection. The child protection processes are explained including timescales and thresholds. The relational autonomy framework is then applied to the relationship, the setting being located both within the private family home and the public meeting room. The forces which co-exist within these settings are gender, biopower and juridical power; the mother faces expectations based on gendered norms of motherhood, whilst the social worker is regarded (by herself and by others) as an expert on child welfare, and the legislation underpinning the child protection process utilises the coercive power of the law.

Chapter five examines the mother's involvement with the police as they respond to the abusive behaviours of her partner or ex-partner. The chapter begins by setting out the

legal framework for police responses to domestic abuse. This is followed by the police processes when responding to domestic abuse, including positive action, the completion of a risk assessment at the scene of a domestic abuse incident, police involvement in the MARAC process and their involvement with breaches of civil orders. The relationship is situated within the private setting of the home; the police predominantly attend the home as the scene of the crime and follow up meetings with the mother are primarily held at the family home. In addition to gendered forces, a hybrid of biopolitical and juridical forces structure the relationship.

Chapter six examines the mothers' involvement with the family law process when dealing with child arrangement orders. It commences with an overview of current legislation and the court processes relevant to child arrangement applications, orders and disputes. The relational framework is then applied to the relationship between the mother and the various professionals who are situated within the family courts. Within the court setting the mother has relationships with the judge, the Cafcass officer and the solicitors representing both parties (if the parties are represented). Along with gendered forces, biopolitical and juridical forces structure these relationships.

Chapter seven concludes the thesis by examining the themes which occur throughout all of the mothers' relationships. The chapter begins by looking again at Hester's Three Planet model, taking into account the "over-lapping" nature of some of the mother's relationships. The invisibility of coercion and the lack of understanding of how the mothers' lives are affected by the abusers' behaviour prevents an adequate response to her needs as a victim of abuse. There is a continuing insistence by professionals throughout the majority of the relationships to prioritise the violence model when

responding to the mother; this model equates domestic abuse with discrete assaults and undermines the mothers' experiences of domestic abuse. There is also an obvious masculine affinity with juridical power which emerges throughout the mothers' relationships. This will be discussed in terms of how it further negates the mother's autonomy after separating from her abuser. The chapter concludes with recommendations for practice which may better support abused mothers to exercise their autonomy to make safer choices for themselves and their children.

Chapter Two- Theoretical Concepts

2.1 Introduction

As discussed in chapter one, during the child protection process an abused mother is expected to free herself from her abusive relationship in order to protect herself and her children from harm. The mother's capacity to think and act autonomously, or independently, of her abuser is vital in order for her to be able to make the decision to free herself from him. It is therefore crucial that the mother's relationships within the child protection, policing and family law systems encourage and foster the autonomy which she is expected to exercise. This thesis aims to systematically examine and test each of these relationships by utilising the theory of relational autonomy.

Cutting across all human relationships are external influences, which can be recognised as "forces" which structure the dynamics between the parties involved in the relationship. The forces operating specifically in the abused mothers' relationships will be examined throughout this thesis. The first of these forces is gender, which structures the mothers' public and private relationships. Gender also structures the various systems the mother is expected to navigate during the child protection process. The second structuring force which influences the mothers' relationships is juridical power. This is the top-down, coercive power which is associated with state law and enforced by the police and the court system. The third structuring force is biopower. This is a regulatory and normalising power system exercised by professional "experts" in human sciences such as social workers. After outlining the theory of relational autonomy, this chapter will introduce each of these structuring forces.

2.2 Relational autonomy

Derived from the Greek word *autonomia*¹ - auto meaning self and *nomos* meaning law - autonomy is understood in English as “self-government” or “to be governed by one’s own law”.² Liberal theory has taken individual autonomy as its central tenet.³ A concept of autonomy which involves a quest for self-determination by an atomistic and bounded individual has been the basis for liberal legal and political theory. Liberalism has been occupied with this concept of *individual* freedom and self-determination, without regard for the fact of human existence within relationships. There has emerged a wealth of feminist critique rejecting the atomistic notion of individual autonomy since the 1970s.⁴ For example, Margaret Urban Walker rejected this liberal notion of autonomy for humans as she argued that it does not allow for “interdependence, community and need for others to move us to action.”⁵ However, since the 1980s an alternative feminist approach to understanding the capacity for autonomy has been developing, addressing the question of autonomy within a social context and highlighting that all human beings can only exist in relation to one another and wider social institutions.⁶ This approach argues that rather than being concerned with autonomy as independence and “living by one’s own law” outside of society, individuals should be recognised as developing and living by their own internal law in the form of core values and life plans, which are shaped by their environments and relationships.⁷ Feminist

¹ The *Oxford English Dictionary* (12th ed) (2011) defines “autonomy” as ‘Self Government’ for further discussion of this see; Nedelsky, J *Laws Relations: A Relational Theory of Self, Autonomy and Law* (2011) pp.123-124

² For a discussion on the history of the concept of autonomy within philosophy see Dworkin, G *The Theory and Practice of Autonomy* (1988)

³ Nedelsky, J “Reconceiving Autonomy: Sources, Thoughts and Possibilities” *Yale Journal of Law and Feminism* 1 (1989) pp.7-9

⁴ Mackenzie, C and Stoljar, N “Autonomy Refigured” in Mackenzie, C and Soljr, N *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (2000) pp.5-21

⁵ Walker M U *Moral Contexts* (2003) p.190

⁶ Marshall J and O’Donovan K “After Birth: Decisions About Becoming a Mother” in Diduck, A and O’Donovan, K (eds) *Feminist Perspectives on Family Law* (2006) p.103

⁷ Nedelsky, J *Laws Relations: A Relational Theory of Self, Autonomy and Law* (2011) p.121

writers have called for a “re-conception” of the term autonomy,⁸ which recognises that relationships and societal links are what enable human beings to develop morally and emotionally. The work of Jennifer Nedelsky has been fundamental in this call. Whilst Nedelsky rejects the liberal reading of autonomy, she argues that autonomy as a core capacity is vital for ongoing human development, stating that autonomy is “the capacity to engage in the ongoing interactive creation of ourselves.”⁹ She therefore calls for an adequate conception of autonomy, rather than its total rejection, arguing, that as feminist scholars autonomy is “central to our aspirations not to let others define our lives, curtail our opportunities or exclude us from the power to shape collective norms.”¹⁰ A relational understanding of autonomy allows all people to “become” autonomous embedded within their societies, making their own life choices and developing moral codes, in relation to others within the societal context.¹¹ People are shaped by their relationships, both good and bad, and their relationships in turn are shaped by their moral codes and normative commitments.¹² The capacity for autonomy is not possible without relationships, and cannot be understood in terms of independence from others. Constructive relations make autonomy possible,¹³ whereas destructive relations can undermine the capacity for autonomy.¹⁴ It is this feminist conception of autonomy, or “relational autonomy”¹⁵ which underpins this thesis.

It is widely recognised that a child’s environment will shape their future adult lives. Children who are not raised in an environment where the correct balance of love, acceptance and

⁸ Mackenzie and Stoljar, above n 4

⁹ Nedelsky, above n 7 p.45

¹⁰ *ibid* p.44

¹¹ Mackenzie and Stoljar, above n 4 p.4

¹² Leckey, R, *Contextual Subjects* (2008) p.102

¹³ Nedelsky, above n 7 p.5

¹⁴ Leckey, above n 12 p.209

¹⁵ Boyd, S ‘Autonomy for Mothers? Relational Theory and Parenting Apart’ *Feminist Legal Studies* 18 (2) (2010) p.137

freedom to learn exists may not develop into an adult with core values such as autonomy. For example, the parents of a child who witnesses domestic abuse in the home are judged as being neglectful, due to the damage this will do to the child's future adult self. However, Nedelsky argues that it is as though once people are considered to be "formed" and have emerged as "rational" agents, relationships become reduced to simply being something people choose to enter into.¹⁶ Nedelsky contends, however, that adults' relationships are in fact just as formative as children's relationships. People exist within networks of these formative, or constitutive, relationships,¹⁷ ranging from individual relations which can be intimate or formal, through to the relations that citizens have on a societal or global level.¹⁸ It is not just personal and individual relationships which are formative but wider relations, such as gendered relations, shape individuals and are embedded within personal relationships. Nedelsky uses the term "nested relations" to describe how wider structures shape the individual person in their own settings.¹⁹ An example of this is the abused mother's wider understanding of gendered norms, along with her recognition of society's acceptance of male violence and her perception of the police's inadequate response to domestic abuse.²⁰ These societal structures are nested in the relationship she has with her abuser, alongside the fear of the abuser, and the dependency on the abuser which are created by the relationship. These nested relations affect the relationships the mother has with the police, the courts and welfare agencies, as well as her local community and her family. Her interactions with the

¹⁶ Nedelsky, above n 7 p.20

¹⁷ Nedelsky, above n 3 p.9

¹⁸ Nedelsky, above n 7 p.19

¹⁹ *ibid* pp.30-31

²⁰ *ibid* p.312

agencies and individuals who aim to assist her are structured by the relations which are nested within her relationship with her abuser.²¹

Relationships can foster or negate autonomy, just as they can foster or negate other core values. Autonomy is important because “autonomy is what enables people to sort, choose, reject, embrace and transform the many factors that might otherwise merely condition us.”²²

On a traditional liberal reading of individual autonomy mothers cannot make autonomous decisions as they have children who are dependent upon them and whose interests they are expected to put before their own.²³ However, relational autonomy is attainable for everyone, including mothers, as they are able to make their own decisions within a relational web; for example, how to raise their children, whether to work outside the home, whether to marry, to cohabit or to raise their children alone.²⁴ If the relationships around them foster autonomy, then autonomy is possible and as relevant to mothers as it is to everyone else within society. A conception of autonomy as relational, and attainable through relations which foster core values, works equally for everyone; men and women; those with and without children.

This thesis is concerned specifically with the abused mothers’ experiences of their relationships. As will be discussed in chapter three, the abused mothers have had relationships which have involved oppression, unfairness and factors which undermine their ability to make autonomous choices.²⁵ In order to systematically test relationships for their ability to promote autonomy Nedelsky adopted a simple framework consisting of three elements. First it is necessary to identify the setting in which the relations exist, for example

²¹ Jones, *A Next Time She’ll Be Dead: Battering and How to Stop it* (2015)

²² Nedelsky, above n 7 p.54

²³ Marshall and O’Donovan, above n 6 p.104

²⁴ Boyd, S et al. *Autonomous Motherhood? A Socio-Legal Study of Choice and Constraint* (2015)

²⁵ Nedelsky, above n 22

the private family setting, a public office or courtroom setting, or a combination of both private and public settings. It is important to identify the relevant setting for the relationship in order to understand what nested forces may already structure that particular setting. The second stage of the framework is to identify which structuring forces exist in the setting. These will include external influences from wider society which have permeated the setting, and which will affect how the people occupying that setting treat one another, perceive the world, what values they hold, or how they feel about themselves. Alongside the nested forces which are situated in the setting, specific relationships may generate other forces within the setting. As introduced above, relationships are nested within one another, each affecting the next in different ways. For example, an abused mother is palpably negatively affected by the abusive behaviour of her partner within the home setting. The abusive behaviour introduces the forces of domination²⁶ and fear into the private family setting. However, the home setting also already features gendered forces which affect what is expected of the mother in terms of unpaid care, along with dependency as a force which reduces choices for the mother, and privacy as a structuring force which reduces the opportunity for positive influences from external forces. These nested forces, which exist within the private family setting, exacerbate the domination of the abuser over the mother. The mother's self-esteem will be affected by the ongoing abuse she is subjected to and the lack of opportunity she perceives as being available to her. This will spill into other areas of her life, reducing her choices for employment, and further increasing her dependency upon the abuser. The children who occupy the family setting where the domination of their mother is a structuring force will also be affected by this force. Their perception of how they should treat other people will be

²⁶ *ibid* p.203

affected, reducing their ability to thrive in their school setting and negatively affecting how they view themselves in the wider world. Forces do not to remain static within each setting, they flow into other settings which other people occupy and further structure those settings in collaboration with forces which are already nested in the setting.

The final stage of the framework is to determine how the practices in the setting interact with the forces which exist in the setting to promote or negate autonomy. These practices could be laws, policies or procedures which are required to be followed in formal relationships. In the case of informal and intimate relationships the term “practices” refers to the behaviour of one or both of the parties. For example, the abusive behaviours of the mothers’ (ex) partners will be introduced in chapter three to illustrate how they further exacerbate the negative forces of gender, dependency and domination in the private family setting.

In order to illustrate how differing practices in different settings can alter how forces affect those who occupying the settings, Nedelsky compares the dependency of a welfare benefit recipient and the dependency of a tenured professor at a public university.²⁷ Both are dependent upon the hierarchical power of the state for their income, however it is the structuring of this hierarchy and dependency in the different settings in which it operates which diminishes autonomy in the former subject, yet fosters autonomy in the latter. The welfare benefit recipient is at the mercy of eligibility rules, suspicion from those administering the welfare, forms to complete, and the reduction or cessation of payments to punish non-conformity with the rules.²⁸ The tenured professor works within a setting where they are dependent on the state for their salary however “vast creative resources have been expended

²⁷ Nedelsky, above n 7 p.39

²⁸ *ibid*

to structure that basic dependence in a way that maximises their autonomy.”²⁹ No such care has been taken in the laws, rules and internal bureaucratic norms which make up the practices which structure the relationship of the welfare recipient with the state.³⁰ The obstacles which are put in the way of the welfare recipient’s pursuit of autonomy ensure that she knows she has very little control over her situation; this is in contrast to the tenured professor, yet they are both recipients of governmental income. There is a force of dependency structuring both of these relationships, but they are located in different settings and the practices in those settings are vastly different. As Nedelsky argues, “the problem...is not the fact of dependence on the state...it is how that dependence...(is) structured.”³¹ The relational autonomy framework provides a consistent approach to examining how the practices in the settings in which the abused mothers’ relationships are situated structure their relationships, in order to test to what extent these relationships may promote their autonomy.

Nedelsky uses the term “disguise” when describing the relationship between practices and forces in the workplace setting of the university or the classroom – that is, the power hierarchies involved are “disguised” by the practices adopted in that setting. When discussing the relationship between practices and forces for the purposes of this study, however, the term “disguise” is not suitable. For example, within the intimate settings of family life, forces such as power hierarchies are very apparent and recognisable as affecting the relationships within that setting. These forces cannot be ‘disguised’. However, it is possible through positive practices within these settings to “mitigate” the potentially negative forces. Certain practices, which will be examined in detail in the following chapters, can structure the power hierarchies

²⁹ *ibid*

³⁰ *ibid* p.40

³¹ *ibid* p.123

to make them manageable for family members; the forces are still present and recognisable as such, but the power imbalances are not so great as to cause harm to any of the family members. For this reason, Nedelsky's term "disguise" will be replaced in this thesis by the term "mitigate".

2.3 Gender as a Structuring Force

Gender is a significant and pervasive force which penetrates all areas of human life. It is the term used to refer to the socially constructed cluster of characteristics,³² or norms, which are deemed to be masculine or feminine. Although a separate concept from the biological definitions of male and female, gender is interlinked with sex because gendered norms are based upon what is expected of each sex.³³ Gender structures all of the mothers' relationships. In Hester's Three Planets study, she argues that:

"meanings attributed to, and expectations associated with, gender may impact on the actions of professionals to perpetrators and victims/survivors and contribute to decisions made."³⁴

The characteristics attributed to femininity include softness and gentleness which lends itself well to caring roles. Females are therefore generally expected to become mothers³⁵ and to be responsible for caring for children within the home.³⁶ De Beauvoir referred to women as "the second sex" as she argued that women's very existence is defined in relation to men's.³⁷

³² Fineman, M A *The Autonomy Myth: A Theory of Independence* (2004) p.56

³³ Greenberg, J A "Defining Male and Female, Intersexuality and the Collision Between Law and Biology" *Arizona Law Review* 42 (1999) p.265

³⁴ Hester, M "The Three Planet Model: Towards and Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence" *British Journal of Social Work* 41 (2011) p.840

³⁵ Douglas, S J and Micheals, M W *The Idealization of Motherhood and how it has Undermined all Women: The Mommy Myth* (2004) p.4

³⁶ Marshall and O'Donovan, above n 6

³⁷ De Beauvoir, S *The Second Sex* (1949) p.35

Attributed masculine characteristics include toughness and the expectation that men will be violent.³⁸ Greer argues that women are expected to be submissive in order to fulfil male fantasies of what is female “normality.”³⁹ This includes an expectation of the inevitability of male violence⁴⁰ and the belief that women need to be protected by other men from this violence.⁴¹ The fear of male violence in society and in the home therefore puts men in the position of either predator or protector of women. Nedelsky argues that this culture of male violence is a constitutive force which shapes women’s and men’s lives.⁴² Women take the fear of male violence for granted, they structure their lives in a way that aims to mitigate the risk of being a victim of this inevitable violence.⁴³ Yet many in society deny the gendered nature of violence against women.⁴⁴

The effects of incidents of male violence are nested within a woman’s relationships on two levels. The individual woman’s feelings of violation and shame exist on one level, whilst society’s reaction to the violence, which amounts to judgement, minimisation and shame, exists on a deeper level. Stanko argues that on both levels women view themselves, and in turn other women, through the lens of the male dominated ideology of how women should behave.⁴⁵ This gendered view about women’s involvement in male violence which dictates that “good women avoid sexual and physical abuse; bad women don’t”⁴⁶ is nested in institutional, societal and individual relationships.

³⁸ Hearn, J *The Violence of Men* (1998) p.36

³⁹ Greer, G *The Female Eunuch* (1993) p.11

⁴⁰ Stanko, E *Intimate Intrusions: Women’s Experience of Male Violence* (1985) p.9

⁴¹ Nedelsky, above n 7 p.210

⁴² *ibid* p.204

⁴³ Stanko, above n 40 p.70

⁴⁴ Monckton, J, Williams, A and Mullane, F *Domestic Abuse, Homicide and Gender* (2014) p.19

⁴⁵ Stanko, above n 40 p.72

⁴⁶ *ibid*

A further constitutive force which is globally prevalent is the expectation upon women to be caregivers. On a global scale, women in poorer countries are exported to western countries to provide caring roles to rich families and to provide sex work for western men.⁴⁷ Throughout western society, the gendered division of labour dictates that women predominantly undertake household tasks, taking on responsibility for children and the elderly. Normalising the role of women to provide free care reduces their choices of accessing the employment market. Fineman argues that “women’s historic roles in the family anchor them to that institution in ways that men’s historic roles do not.”⁴⁸ A series of reports into family life in the 1990s found that despite women increasingly entering the workplace men still undertook much less housework and childcare than women.⁴⁹ There were “many ‘new women’ but they [were] suffering from a dearth of ‘new men’.”⁵⁰ It was reported by the Office of National Statistics in 1998 that in eight out of ten couples the woman undertook the majority of the household chores and dealt with all of the childcare; in 2013 this number had not changed.⁵¹ Despite around 71 percent of women in Britain being employed⁵² it is still the common assumption that men are the main breadwinners. This presumption has a powerful effect, for example Harkness found that if a child falls ill the mother is the most likely to take time off work to care for them.⁵³ Also, Pahl argues that it is the mother’s salary which is most likely to cover childcare costs.⁵⁴ The male privilege which comes from having the upper hand over

⁴⁷ Ehrenreich, B and Russell Hochschild, *A Global Woman: Nannies, Maids and Sex Workers in the New Economy* (2002)

⁴⁸ Fineman, above n 32 p.148

⁴⁹ Brannen, J et al *Employment and Family Life: A Review of Research in the UK (1980-1994)* (1994)

⁵⁰ Willetts, D *The Family* (1993) p.8

⁵¹ Institute for Public Policy Research Available < <http://www.marieclaire.co.uk/news/world/535316/eight-out-of-ten-married-women-do-more-housework-than-their-husbands.html> > Accessed 1st July 2016

⁵² This is compared with 80% of men Office of National Statistics *Labour Market Statistics* (May 2018) Available <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/lf25/lms>> Accessed 8th June 2018

⁵³ Harkness, S *Employment, Work Patterns and Unpaid Work* (2005)

⁵⁴ Pahl, J “Individualisation in Couple’s Finances” *Social Policy and Society* 4 (2005) p.385

women, in both society and in the home, places men in a stronger position to make the laws and policies which further enable this privilege.⁵⁵

The mothers in my study are affected acutely by gendered norms. This is because the role of a “mother” is a universally possessed symbol⁵⁶ and has a value attached to it. Motherhood itself is affected by gendered norms to a greater extent than fatherhood.⁵⁷ As Alison Diduck argues, there is an assumption in the relationship between a mother and her child of “never-ending love...timeless and universal duty... (a) romantic ideal...”⁵⁸ Douglas and Michael term the idealisation of motherhood as “momism”, stating that the media have invented an ideology of mothers that means, “to be a remotely decent mother, a woman has to devote her entire physical, psychological, emotional and intellectual being 24/7, to her children.”⁵⁹ This gendered expectation of motherhood structures the mothers’ lives inside and outside of the home.

2.4 Juridical Power

“Power is not an institution, and not a structure; neither is it a certain strength we are endowed with; it is the name that one attributes to a complex strategic situation in a particular society”⁶⁰

⁵⁵ For example, although the current number of female MP’s in Britain is the highest it has been throughout history, currently 29% of MPs are women. In Britain 30% of judges are women, although this is only 22% in the High Court. Within the 43 police forces in Britain, 28% of officers are female, with 21% of senior officers being female.

⁵⁶ Fineman, M “The Neutered Mother” *University of Miami Law Review* 46 (1992) pp.653-54

⁵⁷ Boyd, S “Gendering Legal Parenthood: Bio-Genetic Ties, Intentionality and Responsibility” *Windsor Yearbook of Access to Justice* 25 (1) (2007) p.65

⁵⁸ Diduck, A *Law’s Families* (2003) p.83

⁵⁹ Douglas and Michaels above n 35 p.4

⁶⁰ Foucault, M *The History of Sexuality: The Will to Knowledge* (1976) p.93

Power is not unidirectional, it flows between all people, throughout institutions and societies, and it structures relations globally. Foucault wrote extensively about power and how society can be seen to have been constituted by the processes of power present at particular times throughout history.⁶¹ He describes the feudal law system in Medieval Europe as a regulated way of making war⁶² which utilised the system of the “test”.⁶³ The test was not concerned with proving the truth of a dispute, but was instead centred on showing which of the two parties was the strongest and therefore the most “important”.⁶⁴ However, the thirteenth century saw “the invention of new forms of judicial practice and procedure”⁶⁵ which were centred on finding the truth in a dispute.⁶⁶ The mode of proceeding for this judicial practice was imposed from above, as Foucault explains:

“individuals would no longer have the right to resolve their own disputes...they would have to submit to a power external to them...imposing itself as a judicial political power.”

The power force created from this judicial process is juridical power, which is “an arrangement and a representation of power rather than the law.”⁶⁷ The modern Western legal system deploys juridical power. Laws, rules and regulations have the ability to reorganise people’s lives because not following them can lead to sanctions. An example of this is the criminal law. There are certain behaviours which are categorised as criminal. If a person is caught behaving in a way which is classified as criminal, they will be arrested and may be

⁶¹ Faubion, J D (ed) *The Essential Works of Foucault 1954-1984 Volume Three* (2000) p.3

⁶² *Ibid* p.39

⁶³ *Ibid* p.37

⁶⁴ *ibid*

⁶⁵ *ibid* p.40

⁶⁶ *ibid*

⁶⁷ Tadros, V “Between Governance and Discipline: The Law and Michel Foucault” *Oxford Journal of Legal Studies* 18 (1998) pp.75-103

subject to a court hearing where they will be faced with sanctions. The purpose of the criminal law is to ensure that behaviours which are harmful to society are prevented by the threat of the removal of civil liberties of the person perpetrating the harm. The very threat of these sanctions is generally sufficient to ensure people regulate their behaviours. Juridical power flows throughout the criminal law process and controls the behaviour of the majority of society with the intention of ensuring society is a relatively safe place in which to exist.

As noted above, as with all relations, juridical power does not exist only in one setting (such as the courts) but permeates all areas of life and is nested within other relations. Juridical power as a force circulates throughout and constructs all human relations, not just institutionally, or in formal relations, but also in informal relations. As Nedelsky explains:

“the law often lies behind, or around these more personal relations, shaping them in important ways. We ignore them at our peril since they are at work in far more ways than people imagine.”⁶⁸

An example of this can be seen in the recent legislation which created the criminal offence of coercively controlling an intimate partner or family member.⁶⁹ The new law is intended to increase safety in the home, by enabling the police to arrest an abuser when they have no evidence of physical violence. The creation of a criminal behaviour which is specific to the private setting of the family increases access to the protection of the criminal law for those who historically did not have easy access to such protection. The breaking down of the privacy of the home by increasing the possibilities for police intervention should reduce isolation for the victim. As the private family setting becomes more accessible to the police, their

⁶⁸ Nedelsky, above n 7 p.65

⁶⁹ Serious Crime Act 2015 s.76

understanding of victims of abuse should increase. This understanding should restructure the relationship between the police and victims, to increase trust, which may further encourage victims to access the criminal law for protection. The new law also increases the accountability of the abuser, making his previously unrestrained behaviour unacceptable. In turn, with convictions for coercive control being reported in the media, society's awareness of domestic abuse and understanding of acceptable behaviours will increase. The new legislation therefore structures society as a whole, whilst particularly structuring the relationships between the victim, the abuser and the police. As coercive control is a newly introduced law, it is not yet possible to determine how it will structure relationships and become nested in certain settings. The above is simply an illustration of how the juridical power of the law can permeate settings and structure relationships.

Juridical power can also be wielded as a resource by individuals. In the case of the abused mother she can use the power of the criminal law against her abusive partner by reporting him to the police and supporting a prosecution for his abusive behaviour. However, this is not unproblematic. As David Ford cautions, the use of the criminal law is of questionable value if it creates greater hardship for the victims.⁷⁰ Therefore, victims should be presented with the law as one of several options which can be utilised in their particular circumstances and the law should not be considered as the "panacea" for their situation.⁷¹ Women often utilise the criminal law to protect themselves from the immediate risk of violence and then may choose not to pursue this course of action further. They may have assessed that the situation no longer requires a criminal justice response. This could be because they feel safer after the

⁷⁰ Ford, A D "Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships" *Law and Society Review* 25 (2) (1991) p.314

⁷¹ Maidment, S "Domestic Violence and the Law: The 1976 Act and its Aftermath" *The Sociological Review* 31 (1) (1983) p.11

incident is over,⁷² or because the involvement of the police has exacerbated their risk.⁷³ If the professionals who act as conduits for the power of the law take control of the prosecution, against the will of the victim, she is no longer wielding the power of the law. Ford argues that victims of domestic abuse cannot properly utilise juridical power unless they can control the process, otherwise it will remain a “secondary source” of power which is under the ultimate control of the other, more powerful, party.⁷⁴ Perpetrators of domestic abuse can also utilise the criminal law by manipulating the understanding of what constitutes acceptable and unacceptable violence against their partners. Merry’s study of domestic abuse cases in Hawaii illustrated that the courts accepted some explanations of violence from the male partners, which indicated that some violence was deemed to be acceptable, and even understandable.⁷⁵ Extreme examples of this can be seen in cases where abusive men use the defence of “loss of control”⁷⁶ to reduce murder to manslaughter after they have killed their partner or former partner.⁷⁷ In the criminal court setting the power of the law is wielded by lawyers who know the system and have an understanding of how to present the situation in a way which will reduce the blame on the abuser for his behaviour. By accommodating certain excuses for violence, such as the victim’s infidelity, the court system produces versions of violence against women which are deemed acceptable.

Family law can also be utilised by both victims and perpetrators of violence. The provisions for protective civil orders in the Family Law Act 1996 are widely utilised by victims of domestic

⁷² Ford, above n 70 p.316

⁷³ Maidment, above n 71 p.111

⁷⁴ Ford, above n 70 p.319

⁷⁵ Merry, S E “Narrating Domestic Violence: Producing the “Truth” of Violence in 19th and 20th Century Hawaiian Courts” *Law and Social Inquiry* 19 (4) (1994) pp.967-994

⁷⁶ The Coroners and Justice Act 2009 s.54

⁷⁷ Howe, A “‘Red Mist’ Homicide: Sexual Infidelity and the English Law of Murder (Glossing Titus Andronicus)” *Legal Studies* 33 (3) (2013) pp.407-430

abuse. Once the civil order is in place, however, the victim is reliant on the police to enforce these orders and as Ford argues, an individual can only wield the power of a threat if the other party is affected by the threat.⁷⁸ If the abuser does not fear arrest or prosecution for breach of the civil order, or, if the police are not proactive in following through with the threat of arrest, the civil order does not give the victim any power. On the other hand, an abusive father is able to wield the juridical power of family law in the form of child arrangement orders which often compel mothers to facilitate contact between the father and the children. This continued contact, and the requirement to facilitate contact in particular, forces the mother to continue to be involved with her abuser despite having ended her relationship with him to protect herself and her children.

2.5 Biopower

It is relatively easy to identify the regulating force of juridical power throughout society. The system of biopower, by contrast, arose from a subtle shift during the eighteenth century from the coercive judicial processes exercised by sovereigns, to the control of populations by means of knowledge and expertise. Foucault describes the emergence of biopower as:

“...a new knowledge of a completely different type, a knowledge characterised by supervision and examination, organised around the norm...”⁷⁹

To illustrate how the biopolitical system differed from the traditional coercive system, Foucault offers a comparison between the outbreak of leprosy in the middle-ages, the seventeenth century plague and the smallpox epidemic of the eighteenth century. He explains

⁷⁸ Ford, above n 70 p.319

⁷⁹ Faubion, above n 61 p.59

that the earlier two epidemics were controlled by the coercive system, whereby sufferers were forcibly excluded from their communities to stop the diseases from spreading. By contrast, the later smallpox epidemic was managed within the mechanism of biopower. To control the epidemic, experts invented a vaccine, worked out how many of the population were infected, what ages were most prone to the disease and in which areas the disease was likely to spread.⁸⁰ The coercive juridical system may have been utilised to ensure that the vaccines were administered, but not in the way it had been used to exclude previously.⁸¹ Foucault refers to the vaccines used to fight the smallpox epidemic as the “medical police”⁸² because they controlled the disease. He explains that the experts used the tool of “normalisation” in order to dispense the “medical police” into society. By assessing how the disease would spread, where it would spread and to whom, the experts were able to assess the “normal distribution” of the epidemic. From this information they were able to chart a “normal curve” which enabled them to predict where the disease was likely to spread. They also measured outbreaks in areas which exceeded this normal curve. These were recognised as deviant areas where the “medical police” were administered to control until the level of outbreaks of the disease within that area was in line with the normal curve of outbreaks expected.⁸³

This example is specific to Foucault’s argument about the control of populations. Carol Smart elaborates upon this discussion of experts and control through normalisation in relation to women’s bodies.⁸⁴ She argues that working class women’s bodies have historically been

⁸⁰ Foucault, M *Security, Territory, Population: Lectures at the College De France* 11 January 1978 p.10

⁸¹ *ibid*

⁸² *ibid* p.4

⁸³ *ibid* p.8

⁸⁴ Smart, C *Feminism and the Power of Law* (1989)

regarded as carriers of disease by those with medical knowledge. The objective of the Contagious Diseases Acts of the 1860s, for example, was to enable experts to access those bodies which were judged to be in need of moral and medical control.⁸⁵ Biopower constrains individual behaviours through:

“a set of standards and values associated with normality which are set into play by a network of ostensibly beneficent and scientific forms of knowledge.”⁸⁶

However, the concept of experts exercising a normalising control over the population is not confined to medical practice. As Nicholas Rose explains about the use of experts in modern life:

“...professionals that were invented in the twentieth century to make liberal freedom possible, social workers, therapists, personnel managers, all claim to understand how we should better our lives.”⁸⁷

Rose and Miller further explain that these emerging professionals’

“...role is not one of weaving an all-pervasive web of social control but of enacting assorted attempts at the calculated administration of diverse aspects of conduct through countless, often competing, local tactics of education, persuasion, inducement, management, incitement and encouragement.”⁸⁸

⁸⁵ *Ibid* p.94

⁸⁶ McNay, L *Foucault: A Critical Introduction* (1994) p.94

⁸⁷ Rose, N *The Politics of Life Itself* (2007) p.27

⁸⁸ Rose, N and Miller, N “Political Power Beyond the State” in Golder, B and Fitzpatrick, P *Foucault and Law* (2010) p.273

These experts are charged with instilling an ethical code. They are recognised as “wise figure(s)”⁸⁹ who are armed with the knowledge of how the population can live a better life.

Nicholas Rose identifies the welfare state as a biopolitical system, stating that “expertise becomes linked with formal political apparatus...governing individuals [and] families.”⁹⁰

Domestic abuse is currently a high-profile policy issue in England and Wales. The government produced a Violence Against Women and Girls (VAWG) Strategy which states that:

“the costs of violence and abuse to the economy can be calculated and are considerable. Sylvia Walby’s report estimates that providing public services to victims of domestic violence and the lost economic output of women affected costs the UK £15.8 billion annually. The cost to health, housing and social services, criminal justice and civil legal services is estimated at £3.9 billion.”⁹¹

The figures within the VAWG strategy came from a report produced by Sylvia Walby in 2009 which stated that of the £15.8 billion, the loss of earnings of victims of domestic abuse was £1.29 billion and the human and emotional costs amounted to over £9 billion.⁹² Walby explained that the estimated cost of human and emotional damage was based upon “the notion that people would pay something in order to not suffer the human and emotional costs of being injured.”⁹³ Yet the VAWG strategy states that “the cost to individuals cannot be measured.”⁹⁴ The VAWG strategy gives the impression that the Government’s major concern

⁸⁹ *Ibid* p.285

⁹⁰ Rose, N “Government, Authority and Expertise in Advanced Liberalism” *Economy and Society* 22 (3) (1993) pp.283-299

⁹¹ HM Government *Ending Violence Against Women and Girls Strategy 2016-2020* (March 2016) p.9

⁹² Walby, S *Cost of Domestic Violence: Update 2009* (2009)

⁹³ This measurement was in line with the human and emotional cost of road accidents calculated by the Department for Transport - Department for Transport *The Accidents Sub Objective* (2009) TAG Unit 3.4.1

⁹⁴ HM Government above n 91 p.9

is about saving money on public sector services such as policing, health and social care. There is no mention of the harm and injustice of living with an abuser, and how the individual trauma of domestic abuse is an infringement of women's human rights. The total figure cited relates to the impact of domestic abuse, but the human element is lost in the government's translation of Walby's study. When human costs *are* mentioned these are explained in terms of clusters of social problems which are attributed to domestic abuse, such as substance misuse, homelessness, chaotic lifestyles and offending⁹⁵ rather than in terms of the impact on individual people. This implies a biopolitical desire to reduce the impact of domestic abuse to ensure the productivity of the population by keeping them healthy, strong, hardworking and safe.⁹⁶ Just as Foucault described the emerging technologies which arose from human sciences to regulate behaviours, domestic abuse policies can be recognised as having biopolitical features which are intended to shape the behaviour of the population through interactions with experts who are situated throughout the various agencies tasked with responding to the epidemic of domestic abuse.

As Smart argues, the emergence of biopower does not replace juridical power systems. The mechanisms of law enhance the reach of biopower⁹⁷ due to its coercive nature. In her example of the control of women's bodies, the law was utilised to enforce regulation on particular women. Those who do not bend to the norms of biopower are threatened with the power of the law; if the law is not adhered to sanctions are available which are intended to control the behaviour. Smart does not believe that the law will be superseded by biopower but she argues that juridical power will not remain unchanged.⁹⁸ The power of the law is given

⁹⁵ HM Government above n 91 p.8

⁹⁶ McNay above n 86 p.66

⁹⁷ Smart, above n 84 p.6

⁹⁸ *Ibid* p.14

credibility by the presence of biopower in the judicial system, due to the use of expertise in creating norms of behaviour.⁹⁹ Smart argues that it is not possible to assume a typical pattern of co-existence of juridical power and biopower; in some cases there will be a coalition of both forces and in some a conflict.¹⁰⁰ These forces, along with gendered forces, are nested in particular settings and when they combine with the structuring forces which exist in the range of relationships occupying each setting, further forces are created which structure each of the relationships differently. Smart's example of the Contagious Diseases Acts illustrates the convergence of biopower, juridical power and gender. The application of expertise was made possible through the mechanism of the law, upon female subjects.

In Smart's example, each power force is intensified by the other power forces present. Throughout the remainder of this thesis, the convergence of the forces of juridical power, biopower and gender will be identified in the mothers' relationships. Many of the professionals with whom the mother has relationships can be recognised as experts within a biopolitical system. When gendered forces within these relationships combine with the biopolitical forces, the expectation for the mother to conform to the expert's norms is intensified. Throughout the relationships, the threat of juridical power is constantly present, which enhances the strength of the biopolitical power disproportionately when combined with the gendered forces. It is at the point of the three power forces converging that the expectations which the mother is faced with become impossible.

⁹⁹ *Ibid* pp.15-16

¹⁰⁰ *Ibid* p.19

Chapter Three - The Abused Mother, Her Abuser and Domestic Abuse Advocacy Services

3.1 Introduction

This chapter is the first of four chapters to examine each of the relationships the mother has within the child protection process in order to discover whether they promote or negate her autonomy. The chapter will begin by introducing the relationship she has with her abusive (ex)partner. The abusive relationship is examined first to offer the opportunity for a comparative study, whilst also placing the expectations she faces within the child protection process in context. The relationship the mother has with her domestic abuse advocate will then be introduced and examined through the relational lens to illustrate the stark contrast between the autonomy negating practices of the abuser and the largely autonomy enhancing practices of the advocate.

3.2 The Abusive Relationship

This chapter begins with the most problematic of the mother's relations, which is the abusive relationship itself. As introduced in the previous chapter, the capacity for autonomy means that subjects are able to make their own life choices and go on to develop these choices within a relational setting. However, "to be autonomous a person must not only be given a choice but (s)he must also be given an adequate range of choices."¹ Abusive relationships do not foster core values, and specifically do not foster autonomy, because they do not allow choices for the abused person within the relationship. In this section I will examine how and why abusive relationships negate autonomy.

¹ Raz, J *The Morality of Freedom* (1986) p.373

An abuser will use violence, threats and intimidation to coerce their victim in order to completely control them.² The cross governmental definition of domestic abuse is:

“Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse: psychological, physical, sexual, financial and emotional”³

Although this is not a legal or statutory definition it is the definition which is used by government departments to inform policy and by agencies such as the police and the Crown Prosecution Service (CPS) to assist in the identification of domestic abuse cases.⁴ The offence of coercive or controlling behaviour was introduced through the Serious Crime Act 2015, which will be discussed in greater detail in chapter five. The introduction of this offence allows a better understanding of domestic abuse as moving beyond physical violence. Evan Stark describes coercive control as:

“A course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social

² Stark, E *Coercive Control: How Men Entrap Women in Personal Life* (2007)

³ Available at <<https://www.gov.uk/guidance/domestic-violence-and-abuse#domestic-violence-and-abuse-new-definition>> Accessed 12th June 2018

⁴ House of Commons *Domestic Violence in England and Wales* Briefing Paper 6337 (21st June 2017) p.4

connectedness (isolation) and appropriating or denying them access to resources required for personhood and citizenship (control).”⁵

The very essence of this control is intended to erode the ability of the victim to act or think autonomously. When interviewing the mothers for this study, they expounded on the ways in which they were controlled and how their autonomy was negated, within their intimate, abusive relationships. The behaviours of the abusers will be discussed in detail when the practices within the relationship are introduced, however, the first stage of the framework is to identify the setting in which the relations exist.

3.2.1 The Setting

Domestic abuse is distinctive in that it occurs between people who are or who have been intimately involved, or who have a familial tie. The law recognises the specific nature of domestic abuse, and s.62(3) of the Family Law Act 1996 sets out who is considered an “associated person” for the purpose of civil orders. The relations in question include: spouses or ex-spouses, cohabiting couples of either sex, civil partners or ex-civil partners, fiancé(e)s or ex-fiancé(e)s, or people who have had a child together. These relations are all found within a domestic, private setting. The specific nature of domestic abuse, as opposed to random stranger violence or violence between acquaintances, is that it is always found within a private setting, and usually within the family home.

3.2.2 The Structuring Force – Gender

The next stage of the relational autonomy framework is to identify the forces in the setting within which the relationship between the mother and the abuser exists. Gender is a major

⁵ Stark, above n 2 p.15

force which structures the relationships which exist in the private family setting. As introduced in the previous chapter gender is a socially constructed expectation of behaviours which are deemed to be masculine or feminine. There are particular ways a woman is expected to behave and there are a range of roles assigned to women which tie them to the private family setting. The privacy of the family setting has long been viewed as the primary source of women's oppression.⁶ As Catharine Mackinnon argues "(the) ideology of privacy [is] a right of men to be left alone to oppress women one at a time."⁷ The setting of the family home is private and therefore potentially untouchable by others; for example, Martha Fineman characterises the family as being "invisible" to those outside of it.⁸ This privacy restricts state intrusion, "barring changes in control over....the existing distribution of power and resources within the private sphere."⁹ Frances Olsen notes, however, that the state is always involved even in terms of "allowing" private life.¹⁰ It is the notion of privacy itself which ensures that gendered forces within the setting are largely unaffected by state intrusion, yet gendered forces continue to be influenced by societal "norms". For example, within the family unit it is widely expected that the father works outside of the home as the "breadwinner" whilst the mother is expected to be responsible for the unpaid work within the home. This unpaid work includes caregiving and nurturing the emotional development of children, caring for elderly relatives and cleaning the home. This gendered division of labour is present within the family setting and affects relations within that setting.

⁶ Fineman, M *The Autonomy Myth* (2004) p.152

⁷ Mackinnon, C "Roe v. Wade: A Study in Male Ideology" in Garfield, J L and Hennessey, P *Abortion: Moral and Legal Perspective* 45 (1984) p.53

⁸ Fineman, above n 6 p.154

⁹ Mackinnon, C *Toward a Feminist Theory of the State* (1989) p.193

¹⁰ Olsen, F "The Myth of State Intervention in the Family" *University of Michigan Journal of Law Reform* 18 (1985)

Dependency is another gendered force which structures relations within the family setting. Mothers are viewed within families as the primary caregiver¹¹ regardless of whether they are also the main wage earner.¹² The expected dependency of children upon their mothers, and in turn of mothers upon other members of the family, or upon the state to support their care work, produces a negative force within the family setting. Fineman argues that some dependency within society is inevitable, stating that “there is an inherent dependence on society on the part of all individuals”¹³ and therefore, dependency should not be compared negatively to independence.¹⁴ Fineman also reasons that this “inevitable dependency” is far from simplistic and is indeed multifaceted.¹⁵ She describes those who are assigned the responsibility for the care of inevitably dependent people as having a “derivative dependency,” arguing that “those who care for others are themselves dependent upon resources in order to undertake that care.”¹⁶ The family assumes the responsibility for inevitable dependency,¹⁷ and within the family women are predominantly tasked with the role of caring, therefore mothers are disproportionately affected by derivative dependency. This situates responsibility for the organisation of practical matters, such as accessing quality childcare for babies and small children and management of childcare during school holidays, onto mothers. This dependency of children upon the mother leads to a lack of choice for her outside of the home, for example, in obtaining and sustaining paid and fulfilling employment. She may in turn become dependent upon her partner to financially support her. If she does

¹¹ Marshall, J and O’Donovan, K “After Birth: Decisions About Becoming a Mother” in Diduck, A and O’Donovan, K *Feminist Perspectives on Family Law* (2006)

¹² For an interesting discussion on modern motherhood see Miller-McLemore B “Ideals and Realities of Motherhood: A Theological Perspective” in Hanigsberg, J and Ruddick S (eds) *Mother Troubles: Rethinking Contemporary Maternal Dilemmas* (1999) pp.281-303

¹³ Fineman, above n 6 p.30

¹⁴ *ibid* p.28

¹⁵ *ibid* p.35

¹⁶ *ibid* p.36

¹⁷ *ibid* p.38

retain, or obtain, employment outside of the home, she may become dependent upon another family member, upon a nursery or childminders to care for the children “on her behalf.”¹⁸ It is this derivative dependency, and the ensuing dependency upon others and lack of choices and opportunities which produces a negative force within the family. As Susan Boyd claims, the ideology of motherhood “has an effect....so that we are often not viewed as persons in our own right, with choices to make about ways of being and living.”¹⁹

As introduced in the previous chapter, whereas women lack power within the private family setting, men have an uneven balance of power in their favour. Male privilege is encouraged through socially accepted practices which are embedded and mostly invisible within society; this permeates the private family setting in the form of gendered hierarchies. Men have less home-based responsibilities and therefore have more opportunities to be away from the home. This leads to more freedom to make choices for themselves which do not affect the private family setting and are not linked to the needs of the family. Men are therefore not anchored to the home as women are. Additionally, men have historically believed that they had a right to discipline their wives, who were viewed as their property.²⁰ This belief has been supported throughout history by religion and by the law.²¹ For example, the phrase “rule of thumb” is purported to derive from English law, when in 1782 Judge Francis Buller was reported to have ruled that a man may beat his wife so long as the stick used was no thicker than the husband’s thumb. There are some in society who continue to believe that the right

¹⁸ Nedelsky, J “Dilemmas of Passion, Privilege and Isolation: Reflections on Mothering in a White, Middle-Class Nuclear Family” in Hanigsberg, J and Ruddick S (eds) *Mother Troubles: Rethinking Contemporary Maternal Dilemmas* (1999) pp.314-320

¹⁹ Boyd, S “Autonomy for Mothers? Relational Theory and Parenting Apart” *Feminist Legal Studies* 18 (2) (2010) p.140

²⁰ Brownmiller, S *Against Our Will: Men, Women and Rape* (2013)

²¹ Walker, L *The Battered Woman* (1979) p.12

of men to rule women is a primary right.²² Furthermore, it is recognised that men's violence is so engrained in society²³ that it is to be expected, and this "creates ever present – and therefore unrecognisable – terror in women."²⁴ As Hearn argues, "men are members of a powerful social group and a social category that is invested in power"²⁵ and as with other powerful groups, dominance is maintained in many ways, but primarily with violence or threats of violence. Bettinson and Bishop caution that male dominance is to some degree naturalised because heterosexual norms permit men a certain degree of dominance in the minutiae of everyday living even in non-abusive relationships.²⁶ The need to dominate extends beyond the home and throughout social spaces, and is in itself gendered as it relies on women being vulnerable, as women, due to continued sexual inequality.²⁷

Women are the main recipients of male violence.²⁸ However, women also continue to be blamed for the violence they experience. Evan Stark gives an example of victim blaming, where during the summing up of a case of a man who had been found guilty of murdering his wife, the judge lectured the dead woman for "staying with the brute so long."²⁹ Within the community, women are in fear of being raped, and blamed for being raped if they go out alone, wear revealing clothing or are intoxicated.³⁰ Perpetrators of abuse blame their victims,

²² *ibid*

²³ Kivel, P *Men's Work: How to Stop the Violence that Tears our Lives Apart* (1992)

²⁴ Graham, D *Loving To Survive: Sexual Terror, Men's Violence and Women's Lives* (1994) p.xii

²⁵ Hearn, J *The Violences of Men* (1998) p.35

²⁶ Bettinson, V and Bishop, C "Is the Creation of a Discrete Offence of Coercive Control Necessary to Combat Domestic Violence?" *Northern Ireland Legal Quarterly* 66 (2) (2015) p.195

²⁷ Stark, above n 2 p.5

²⁸ Hearn, above n 25 p.36

²⁹ Stark, E above n 2 p.2

³⁰ Daily Mail "Women to Blame for Being Raped" Available < <http://www.dailymail.co.uk/news/article-369262/Women-blame-raped.html> > Accessed 28th October 2016

minimise their own behaviour³¹ or equate their behaviour to normal masculinity.³² Jane Monckton-Smith argues that within the current dominant understanding of domestic abuse the victim is constructed as the problem, whilst the abuser is both invisible and barely culpable.³³ Victim blaming is particularly prevalent when the victim is a mother.³⁴ In the context of the relationships the mothers in this study have with their social workers, the police and the family courts, the mothers generally feel judged by professionals, depending on how they present themselves. They may frustrate the police officers, who have responded to a call from a neighbour, because they refuse to support the arrest or prosecution of their abuser.³⁵ They may not be viewed as a “model victim” if they are too calm and unemotional.³⁶ Alternatively, and paradoxically, a mother’s poor mental health, which may have deteriorated due the abuse and which could affect how she presents herself in court, may be viewed as a mitigating factor for the abuser’s behaviour.³⁷ The gendered division of labour and dependency inside the home, male privilege and the threat of violence both inside and outside the home, along with victim-blaming throughout society, are gendered forces which structure the relationships within the private family setting.

At this stage in the application of the relational framework there *could* be evident practices within the family setting which mitigate these gendered forces. For example, in egalitarian

³¹ Boonzaier, F “Women Abuse: The Construction of Gender” *South African Journal of Psychology* 30 (2) (2004) p.445

³² Anderson, K and Umberson, D “Gendering Violence: Masculinity and Power in Men’s Accounts of Domestic Violence” *Gender and Society* 15 (3) (2012) pp.358-380

³³ Monckton Smith, J, Williams, A and Mullane, F *Domestic Abuse, Homicide and Gender: Strategies for Policy and Practice* (2014) p.10

³⁴ Radford, L and Hester, M *Mothering Through Domestic Violence* (2006)

³⁵ Monckton Smith et al. above n 33 p.20

³⁶ Radford, L “Peace at Home – Safety and Parental Contact Arrangements for Children in the Context of Domestic Violence” In Breen, C (ed) *Children’s Needs, Rights and Welfare: Developing Strategies for the “Whole Child” in the 21st Century* (2004) pp.85-104

³⁷ Radford, above n 34 p.111

and non-coercive relationships, the structuring of the relations would be altered to allow core values such as autonomy to exist. However, in the discussion to follow I will introduce the specific behaviours of the abusive partner, as “practices” within the gendered family setting, to illustrate why an abusive relationship does not foster autonomy.

3.2.3 Practices in the Private Family Setting

“The decision to stay with (or not to leave) a violent partner may not be an example of autonomous choice, but a reflection of the systematic chipping away at the qualities we need – such as a sense of self-worth or self-trust – in order to exercise a degree of autonomy over our lives.”³⁸

During the 1980s the Domestic Abuse Intervention Project (DAIP) in Duluth, Minnesota³⁹ developed a pioneering perpetrator programme that is now utilised worldwide to assist victims, perpetrators and professionals in recognising the dynamics of an abusive relationship. DAIP brought attention to the gendered power relations within abusive relationships which enable an abuser to exercise power and control over their partner. This control is achieved through acts of violence and threatening behaviour, intimidation and coercion. Specific behaviours, or practices, of the abuser include: threats, which could include threatening to commit suicide or to report his partner to social services; intimidation, which includes the use of threatening gestures, glaring, or smashing items in the home; emotional abuse, which includes humiliating his partner, calling her names, playing mind games or making her feel guilty; isolation, which includes stopping his partner from having friends,

³⁸ Day Sclater, S et al. *Regulating Autonomy: Sex, Reproduction and Family* (2009) p.7

³⁹ Available <www.theduluthmodel.org> Accessed 12th August 2018

controlling where she goes or who she talks to; minimising, denying and blaming, which includes making light of the abuse, making excuses for his behaviour and blaming her for the abuse or denying the abuse has even happened; using the children, which includes threatening to take the children away or using his right to contact with the children to harass his ex-partner; economic abuse, which includes preventing his partner from having or keeping employment or taking the money she has earned; and using male privilege, which includes treating his partner like his servant. These practices are always underscored by the presence or threat of physical and/or sexual violence, and the purpose of these practices within the private setting is to maintain power and control over the abuser's partner. The mothers interviewed for my study described their abusive partners and ex-partners as controlling. M6 explained that her partner was not physically violent towards her but the "big sort of problem with it all really [was] control...he was very controlling."

The abused partner lives in fear of being harmed or possibly killed if they do not comply with their abusive partner's demands.⁴⁰ Women talk about the threats of violence being worse than the actual violence, as the threat is hanging in the air, with no idea of what may happen or when.⁴¹ The capacity to make choices of their own is reduced as the demands of their partner must be obeyed through the fear of violence. M2 described the level of violence she was subjected to on a daily basis:

"He has held me round my throat till I have passed out. He's pushed me to the floor so hard my head has cracked the kitchen tiles. He grabs me a lot.... he will lick his hand and smack me in the face. [My

⁴⁰ Johnson, M P and Ferraro, K J "Research on Domestic Violence in the 1990s: Making Distinctions" *Journal of Marriage and Family* 62 (2000) pp.948-963

⁴¹ Humphreys, C and Thiara, R 'Neither Justice nor Protection: Women's Experiences of Post-Separation Violence' *Journal of Social Welfare and Family Law* 25 (3) (2003) p.201

daughter] asked him once ‘why do you lick your hand’ and he said ‘it’s because it hurts more’. He does this thing with his arm where he will put his elbow up into my face and hit me round the bottom of my jaw.”

The abuser uses threats of violence if she tries to end the relationship, towards both her and her children.⁴² The fear of post-separation violence further reduces the choices open to the woman; she may decide that it is safer to be in the relationship as she may believe she is exercising some level of control over the situation if she can keep her partner within the relationship.

Pregnancy is a time when a woman is already recognised as having diminished control over her body⁴³ and her choices are therefore reduced simply by virtue of being pregnant. Violence during pregnancy is very common as this is a time of increased vulnerability for the pregnant woman wishing to protect her child as well as herself.⁴⁴ Most of the mothers interviewed recalled the abuse escalating when they were heavily pregnant:

“As they do, he got worse when I was pregnant with our now six year old, and I was eight months pregnant with her and there was an incident....” (M3)

⁴² *Ibid* p.196

⁴³ Meyers, D *Being Yourself: Essays on Identity, Action and Social Life* (2004) p.257

⁴⁴ Mezey, G and Bewley, S “Domestic Violence and Pregnancy” *The British Journal of Obstetrics and Gynaecology* 104 (5) (1997) pp.528-531

“He pulled me down the stairs by my hair, he’s thrown glasses and things at me, tells me what I can and can’t wear and [he] first started hitting me when I was seven and a half months pregnant.” (M4)

“Throughout the pregnancy he would text me continuously, making demands...” (M6)

“I lost six children trying to get [my son] and when we got him...that’s when [ex-partner] changed. He went out and wet the baby’s head...when he came back...he kicked me out of the bed and I landed on [my son], he was only two weeks old.” (M7)

The abuser perceives a lack of control over his partner due to her involvement and attachment with her unborn or new born baby. He will aim to gain further control over her with violence or threats towards the safety of the unborn child and later towards the baby. A report of a study into domestic violence during pregnancy noted that those women who eventually disclosed abuse were accompanied to ante-natal appointments much more often than those who did not disclose any abuse.⁴⁵ By being present throughout ante-natal appointments the abuser is controlling the situation; his presence stops his partner from disclosing the abuse.

Another practice of abusers which increases control and reduces autonomy is “reproductive coercion”. This is the practice of refusing to allow the use of contraception in order to keep his partner pregnant; or refusing the use of contraception and then demanding that she terminates any pregnancies. Along with the obvious control issues, this can be detrimental

⁴⁵ *ibid* p.528

to the woman's health, both physically and mentally.⁴⁶ A recent report found that "unintended pregnancies" and domestic violence have a high correlation.⁴⁷ The report used the term "unintended pregnancies" in respect of the woman's intentions, but the abuser's intentions may be harder to determine. The study of women within fifteen low to middle income countries found that fear, control and sexual violence within their relationships led to women's inability to control their own reproduction, leading to unwanted pregnancies and unsafe abortions. The choice of whether to conceive and then to go ahead with a pregnancy⁴⁸ shapes a woman's life, affecting her choices from the moment she becomes pregnant. By taking the choice of reproduction away, and forcing a pregnancy onto the woman, the abuser is again taking control over the path their partner must take in life, further negating her autonomy.

By controlling his partner's finances, the abuser further reduces her choices outside of the home and in turn reduces her capacity for autonomy. A 2008 report by Refuge found that half of respondents' abusive partners had interfered with education or employment, and 75 percent of respondents' finances were fully controlled by their abusive partners.⁴⁹ The report also found that the amount of welfare benefit 'take up' increased after the respondents entered into the abusive relationship,⁵⁰ yet only 48 percent of the respondents had any access to these welfare benefits.⁵¹ If finances are taken away, choices are also taken away, as leaving

⁴⁶ American College of Obstetricians and Gynaecologists *Reproductive and Sexual Coercion* Report no.554 (2013)

⁴⁷ Pallitto, C et al. "Intimate Partner Violence, Abortion, and Unintended Pregnancy: Results from the WHO Multi-Country Study on Women's Health and Domestic Violence" *International Journal of Gynaecology and Obstetrics* 120 (1) (2013) pp.3-9

⁴⁸ Marshall J and O'Donovan K "After Birth: Decisions about Becoming a Mother" in Diduck, A and O'Donovan, K *Feminist Perspectives on Family Law* (2006) p.103

⁴⁹ Sharp, N *What's Yours is Mine* (2008) p.2

⁵⁰ *ibid* p.5

⁵¹ *ibid* p.3

the abuser and setting up home elsewhere requires an income. If the abuser forces or coerces his partner to lose her employment this further compels her to stay within the private setting of the family, where her autonomy is limited, and she will become increasingly dependent upon the abuser. The “option” of fleeing the home, becoming homeless, and being judged by others as not providing security for her children is not a viable one and therefore the “choice” to stay in the abusive home often seems the only feasible option.

Isolation of abused women from society, and specifically from potentially positive relational links, further compounds the problem of dependency upon the abuser. One mother described how it was very difficult for her to go out of the house for any length of time;

“It’s just difficult to ever leave the house, ever do anything. I can’t freely just leave my own house, and just do my own thing...the only time I can [leave the house] freely is if he is out at work, and then more likely than not I’ll get a phone call while I am out asking where I am and how long I’m going to be...so I’ve got to get back.” (M2)

Beyond the obvious physical isolation that being forced to stay within the home brings, many of the mothers spoke about their abuser’s jealousy of their family ties and how his behaviour towards friends and family alienated them from anyone situated outside of the family home.

“He hated me going anywhere with my family, he was really jealous of them...he will send me a text message...and say something that my mum has apparently told him...sort of try and make me think badly of her.” (M6)

“He was very controlling...he would isolate me from my friends and family, he was always very charming to everyone on the outside but on the inside, behind closed doors he wasn’t that nice...he never had a relationship with my family but when all this happened, f**k me, he was the best dad in the world.” (M7)

“He also went through my family members, I have no family left now that I speak to...he was going around all the time filling their heads with rubbish...they just stopped talking to me.” (M9)

Stark introduces the concept of a “cage” in which the abused subject is caught, and argues that until the nature of the cage is identified practitioners will not be able to aid the victim in escaping. He states: “[the] barrage of assaults, the locked door, missing money, rules for cleaning, text messages...[are] recognised as bars.”⁵² Abuse of this nature is not visible to those outside of the private family domain; the “cage” is not evident and the exercising of coercive control is “invisible in plain sight.”⁵³ Hester describes coercive control as a “long thin offence.” She explains that abusers often do not stand around with blood on their hands waiting to be arrested and victims do not always present to professionals with visible injuries.⁵⁴ Coercive behaviours can be subtle, and tend to be particular to the individuals in the relationship. Stark defines this as an “individualised package of behaviours developed through a process of trial and error for the victim by the person who knows her most

⁵² Stark, above n 2 p.198

⁵³ *Ibid* p.14

⁵⁴ Hester, M *Domestic Abuse Masterclass: Thames Valley Police* (October 2013) Cited in Monckton Smith, J, Williams, A and Mullane, F *Domestic Abuse, Homicide and Gender: Strategies for Policy and Practice* (2014) p.17

intimately.”⁵⁵ Emma Williamson frames the abuser’s world as an “unreality”⁵⁶ which their partner must negotiate in order to survive. The “rules” of this “world” change without notice and the abused partner must keep up with the new “rules” or suffer the consequences. Coercive control is the accumulation of both violent and non-violent practices of the abuser within the private family setting. Gendered expectations can disguise the controlling and coercive nature of certain behaviours⁵⁷ and this structuring force of gender within the home allows the continued presence of coercive control:

“the most common targets of control are women’s default roles as mothers, home makers and sexual partners. By routinely deploying the technology of coercive control a significant subset of men ‘do’ masculinity...in that they represent both their individual manhood and the normative status of ‘men’”⁵⁸

As Tolmie argues, the concept of coercive control requires “a sensitive gender analysis” and an understanding of “gender socialisation and gendered distributions of power and domination in heterosexual relationships.”⁵⁹ This is especially pertinent when examining the “microdynamics of everyday living.”⁶⁰ Without this ability to look beyond the gendered dynamics of everyday life:

⁵⁵ Stark, E above n 2 p.206

⁵⁶ Williamson E “Living in the World of the Domestic Violence Perpetrator: Negotiating the Unreality of Coercive Control” *Violence Against Women* 16 (12) (2010) pp.1412-1423

⁵⁷ Bishop, C and Bettinson, V “Evidencing Domestic Violence, Including Behaviour that Falls Under the New Offence of ‘Controlling or Coercive Behaviour’” *International Journal of Evidence and Proof* 22 (1) (2018) pp.3-29

⁵⁸ Stark, above n 2 p.21

⁵⁹ Tolmie, J “Coercive Control: To Criminalise or not to Criminalise?” *Criminology and Criminal Justice* 18 (1) (2018) p.55

⁶⁰ Stark, above n 2 p.30

“the perpetrator may... simply look like an old-fashioned man – one who expects certain standards in his home and in relation to his children...Women’s roles as wives and mothers involve a measure of unpaid servitude, even in otherwise egalitarian relationships, and this can make women’s oppression hard to see.”⁶¹

Stark explains that:

“micromanagement of how women perform as women lies at the heart of coercive control and is emblematic of how coercive control violates [women’s] equal rights to autonomy, personhood, dignity and liberty.”⁶²

Within this relationship the victim loses sight of her own moral code, and her choices are eradicated. She is coerced into staying with the abuser and severing supportive relational ties. She is also coerced into adopting his views on the world in place of her own. As Judith Herman explains:

“Terror, intermittent reward, isolation and enforced dependency may succeed in creating a submissive and compliant prisoner. But the final step in the psychological control of the victim is not completed until she has been forced to violate her own moral principles and to betray her basic human attachments.”⁶³

⁶¹ Tolmie, above n 58 p.56

⁶² Stark, above n 2 p.31

⁶³ Herman, J *Trauma and Recovery* (2001) p.83

An example of this may be where an abused mother holds a belief that children should be raised in a caring and safe home, yet betray this belief by concealing the abuse they have witnessed from her wider family, therefore enabling the abuse to continue. She may hold moral values that state that she should not steal yet betray these values because she has been left with no money due to financial abuse, so must steal in order to feed her children.

To summarise, within a relational framework, we can recognise the setting for the abusive relationship as the private, family home. The gendered forces which exist within this setting could be mitigated and autonomy could exist for all involved. However the practices of the abuser, in the form of his abusive behaviour, enables him to exercise coercive control over his partner, which fosters fear rather than her autonomy. Coercive control isolates the abused partner, exacerbating the privacy of the family setting, severing any support from “autonomy fostering” relational ties. As Nedelsky warns: “prolonged exposure to autonomy-undermining relationships, and the absence of sustaining relationships will erode autonomy.”⁶⁴ The abuser’s behaviour negates autonomy in order for the abusive relationship to continue; the abused partner becomes more dependent upon the abuser as she loses sight of any other choices than to stay within the abusive setting. Once the abusive relationship is recognised as a complex and interwoven struggle for power and control, it is easier to understand what it takes for the abused partner to act autonomously, and leave the relationship.

⁶⁴ Nedelsky, *J Law’s Relations: A Relational Theory of Self, Autonomy and Law* (2011) p.64

3.3 Domestic Abuse Advocacy Services

The next section examines the relationship the mother has with domestic abuse advocates and advocacy services. In contrast to the abusive relationship which wholly negates the mother's autonomy, the purpose of the advocacy services is to promote her autonomy.

3.3.1 Framework of Services

Since the opening of the first women's refuge in 1971, specialist domestic abuse services have been created and evolved within the charity sector. In 1974 the National Women's Aid Federation brought together forty refuge services across the United Kingdom, to become the first national domestic abuse organisation. Support for victims and survivors of domestic abuse is now available in many forms, and over the past two decades statutory services have been developing their own responses to domestic abuse. The Institute of Health Visiting (IHV) currently advise health visitors to ask their patients regularly about domestic abuse, to be trained to complete domestic abuse risk assessments and require that a trained domestic abuse lead be available within all health visiting teams.⁶⁵ Housing departments based within local councils have to follow guidance which includes identifying domestic abuse as early as possible and being aware that they may be the first agency to receive disclosures of abuse as their client may not have reported the abuse anywhere else.⁶⁶ The guidance for social workers and for police officers will be discussed in greater detail in chapters four and five respectively; however statutory services all have within their guidance the signposting of domestic abuse victims to specialist services and to respond to domestic abuse as part of a multi-agency approach.

⁶⁵ Department for Health *Guidance for Health Professionals on Domestic Violence* (2013)

⁶⁶ Department for Communities and Local Government *Supplementary Guidance on Domestic Abuse and Homelessness* (2014)

As introduced above, the DAIP programme were pioneering in their approach to recognising domestic abuse as a pattern of controlling behaviour; they aimed to address uneven systematic power relations by promoting a Coordinated Community Response (CCR) which placed responsibility for tackling domestic abuse equally upon all agencies involved with the victim, perpetrator and their children.⁶⁷ This model was adopted by the Home Office in 2006 in their domestic violence delivery plan, which included enhancing the responsibility of service providers to increase the safety of victims and their children; along with holding perpetrators to account for their behaviour.⁶⁸ The CCR has been developed nationally⁶⁹ and adopted by most local authorities as a “community prevention”⁷⁰ response to domestic abuse. Local authorities are statutorily responsible for ensuring some level of domestic abuse support provision is available within their areas.⁷¹ An example of this is the provision of One Stop Shops which are weekly open access sessions where people affected by domestic abuse have the opportunity to seek support. These One Stop Shops are delivered in a variety of ways throughout the country, however each local authority develops a set of protocols to be followed by organisers of the sessions.⁷² This is to ensure consistency and safety for everyone involved. The local authorities’ multi-agency groups, generally called forums, are responsible for the monitoring of the One Stop Shops.⁷³

⁶⁷ Pence, E and McMahon, M A *Coordinated Community Response to Domestic Violence* (1997)

⁶⁸ Home Office *National Domestic Violence Delivery Plan: Progress Report 2005/2006* (2006)

⁶⁹ See <<http://www.ccrm.org.uk/>> accessed 27th July 2016

⁷⁰ Coy, M and Kelly, L *Islands in the Stream: An Evaluation of Four London Independent Domestic Violence Advocacy Services* (2011) p.9

⁷¹ Crime and Disorder Act (2000) s.6 (1)

⁷² Kent and Medway Domestic Abuse Strategy Group *Kent and Medway Domestic Abuse One Stop Shop Protocols* (2014)

⁷³ *ibid* p.7

Independent Domestic Violence Advisors (IDVAs) are also located within this community multi-agency response model;⁷⁴ and tend to be employed by support and advocacy services.⁷⁵ The involvement of local authorities in delivering domestic abuse services has led to a “professionalisation” of specialist domestic abuse support work and advocacy⁷⁶ which had previously been delivered by small, specialist and locally based community groups.

3.3.1.1 Domestic Abuse Advocates

“The main purpose of an IDVA is to address the safety of high risk domestic abuse victims and their children. Serving as a victim’s primary point of contact, IDVAs normally work with their clients from the point of crisis to assess the level of risk, discuss the range of suitable options and develop coordinated safety plans.”⁷⁷

IDVAs work with victims of domestic abuse who have been assessed as being faced with a high risk of death or serious injury. The current process of risk assessing was established in 2008 with the introduction of the Domestic Abuse, Stalking and Harassment Risk Assessment Checklist (DASH RIC).⁷⁸ This tool was developed by Laura Richards, a behavioural analyst, on behalf of the Association of Chief Police Officers (ACPO) following the analysis of 114,000 reports of domestic abuse, including 56 homicides, within the London area.⁷⁹ The DASH RIC is currently very widely used by police, but also by many other agencies who may be responding

⁷⁴ Robinson, A *Independent Domestic Violence Advisors: A Multi-Site Process Evaluation* (2009)

⁷⁵ Kelly, L and Humphreys, C “Supporting Women and Children in Their Communities: Outreach and Advocacy Approaches to Domestic Violence” in Taylor-Browne, J (ed) *What Works in Reducing Domestic Violence* (2001)

⁷⁶ Bennett et al “Effectiveness of Hotline, Advocacy, Counselling and Shelter Services for Victims of Domestic Abuse: A State Wide Evaluation” *Journal of Interpersonal Violence* 19(7)(2004) pp.815-829

⁷⁷ Coy and Kelly, above n 69 p.7

⁷⁸ Available <<http://safelives.org.uk/practice-support/resources-identifying-risk-victims-face>> Accessed 27th July 2016

⁷⁹ See <<http://www.womensviewsonnews.org/2015/06/dv-risk-assessment-tool-training-crucial/>> Accessed 27th July 2016

to incidents or disclosures of domestic abuse.⁸⁰ The DASH RIC incorporates the indicators of risk such as pregnancy, recent separation, stalking and harassment, threats to kill, harm to animals, drug or alcohol abuse, mental health issues and a history of violence. The questions are designed to identify how many of these risk indicators are present in the victim's relationship. The victim's risk of death or serious injury is related to the number of indicators identified, the more indicators, the higher the risk. The assessment should be based upon the current situation, and the response should be rapid, as risk is fluid and situations can change quickly. The risk assessments should be revisited and reviewed periodically, and whenever circumstances change, for example when a further incident occurs. The victim can be assessed as being at high risk if they answer yes to 14 of the 24 questions; this is recognised as "visible high risk" and would require the support of an IDVA. More experienced practitioners are also able to use their "professional judgement" to assess a victim as high risk, by taking into account the context of her answers.⁸¹ If the victim answers yes to between 10 and 14 questions on the DASH RIC she will be assessed as medium risk and under 10 she will be assessed as standard risk. As introduced later in this chapter, if there is outreach support available within the area where the victim lives she can be offered outreach support if she is assessed as being at medium or standard risk.

As IDVA services are non-statutory and operate independently from statutory agencies their working practices are not governed by legislation; however, there are codes of conduct and frameworks which IDVA services are expected to follow to ensure good practice and

⁸⁰ See < <http://www.dashriskchecklist.co.uk/> > Accessed 1st August 2016

⁸¹ Richards, L *DASH Frequently Asked Questions* (2010) Available
<<http://www.dashriskchecklist.co.uk/uploads/pdfs/DASH%202009%20FAQs.pdf>> Accessed 21st September 2016

consistent delivery. SafeLives⁸² are a national charity, founded in 2005, with the vision to coordinate the work of small domestic abuse organisations across the country. They deliver training for an IDVA accredited qualification⁸³ and offer an accredited “Leading Lights” status to domestic abuse services.⁸⁴ When organisations deliver an IDVA service, or any domestic abuse service, they are expected by funders and local partner agencies to follow the guidelines provided by SafeLives. An organisation having the Leading Lights accreditation can increase the opportunities for funding for that organisation.⁸⁵ However, there is no statutory requirement for domestic abuse organisations to hold the accreditation.

Professionals such as police, social services, health visitors, schools or housing associations will refer into an IDVA service if they have responded to an incident of domestic abuse or they receive a disclosure of abuse from a victim in the course of their work with that person. An IDVA referral can be made in a variety of ways depending on the referral routes for each organisation. Timescales for initial contact vary across organisations, but SafeLives’ guidance is to make contact within 48 hours after receipt of a referral.⁸⁶ Where possible the IDVA will meet with the client, but if this is not safe or practical they will complete their first contact by telephone. During this initial contact the risk assessment will be completed, or if the risk assessment has already been completed by the referring agency it will be revisited by the IDVA to ensure the risk level is up to date. The IDVA will also complete a safety plan, which includes tasks for the victim, the IDVA or other professionals aimed at reducing the risk and ensuring safety for the future. The actions which can be found on a safety plan can include

⁸² Formerly Coordinated Action Against Domestic Abuse (CAADA)

⁸³ See <<http://caada.org.uk/training/if-you-work-idva/idva-training>> Accessed 27th July 2016

⁸⁴ See <<http://caada.org.uk/practice-support/resources-domestic-abuse-and-idva-service-managers/leading-lights>> Accessed 27th July 2016

⁸⁵ See <<http://www.safelives.org.uk/practice-support/resources-domestic-abuse-and-idva-service-managers/leading-lights>> Accessed 5th December 2016

⁸⁶ SafeLives *Leading Lights Dossier* (February 2014) p.10

changing locks to secure the home, an emergency move away from the home, access to refuge, an application to court for a protective civil order, reporting to police or ongoing liaison with police around bail conditions or charging decisions, or any other actions intended to put the woman in a safer position.

The IDVA will also ascertain the victim's wishes and feelings with the intention of enabling these to be acknowledged within official settings, and most specifically at the periodically held Multi-Agency Risk Assessment Conference (MARAC). A DASH RIC should be used as soon as a professional receives a disclosure of domestic abuse. It may not be the IDVA who completes this as any trained professional can complete the DASH RIC. If the victim is assessed as being at high risk of harm, as well as being referred to an IDVA, she will be referred to her local MARAC. Introduced across England and Wales in 2006 as part of the CCR, the MARAC was designed to take the responsibility for high risk cases away from just one or two agencies.⁸⁷ A multi-agency response to domestic abuse is vital because:

“No single agency or professional has a complete picture of the life of a domestic abuse survivor, but many will have insights that are crucial to their safety.”⁸⁸

The MARAC will also be discussed in chapter five, in respect of the police involvement with the process, however it is important to include the MARAC within the framework of support and advocacy services as the presence of the IDVA at the MARAC is “intrinsic”⁸⁹ to the overall process of multi-agency working. Within the MARAC meeting itself, various middle and senior

⁸⁷ Coordinated Action Against Domestic Abuse *MARAC Chair – toolkit for MARAC* Somerset (2009) p.1

⁸⁸ Sharp-Jeffs, N and Kelly, L *Domestic Homicide Review (DHR) Case Analysis: Report for Standing Together* (2016) p.6

⁸⁹ Home Office, above n 67

management level professionals discuss each high-risk case to decide how best to safeguard the victim and their children. Those in attendance have decision making capacity but do not need to have direct knowledge of the victim or her family. The presence of the victim is not permitted at the MARAC meeting⁹⁰ and so the IDVAs “speak up for victims”⁹¹ with the intention of ensuring their wishes and feelings are taken into consideration amongst the decisions that are made by the representatives of the police, social services, health and education departments.⁹² The IDVA should be an “effective advocate”⁹³ at the centre of the MARAC proceedings, representing the views of the victim in her absence.

Advocacy is an activity by an individual or a group of people which aims to influence decisions on a large or small scale. For example, mental health advocates help people with mental illness express their views and wishes, whilst also assisting them to access information and services.⁹⁴ There are advocacy services available for most vulnerable groups, which sit predominantly within the voluntary sector.⁹⁵ However, the term “advocacy” within domestic abuse services incorporates a wide range of activities. Advocates provide emotional support, information and advice as well as signposting and acting as the liaison between victims and the many agencies they are expected to navigate.⁹⁶ Whilst the role of the IDVA is recognised as specifically being responsible for advocating for high risk victims of domestic abuse at the

⁹⁰ Kent Police *Kent and Medway Multi Agency Risk Assessment Conference (MARAC) Operating Protocol and Guidelines* (2013) p.6

⁹¹ Harne, L and Radford, J *Tackling Domestic Violence: Theories, Policies and Practice* (2008)

⁹² Kent Police above n 89 pp.5-6

⁹³ *Ibid* p.10

⁹⁴ See <http://www.mind.org.uk/information-support/guides-to-support-and-services/advocacy/#.V5ugUt_6uTM> Accessed 29th July 2016

⁹⁵ The Mental Capacity Act 2005 requires Local Authorities to provide an Independent Mental Capacity Advocacy Service (IMCA) to assist those who lack capacity and have no family available to help make important decisions.

⁹⁶ Kelly, L and Humphreys, C “Supporting Women and Children in their Communities: Outreach and Advocacy Approaches to Domestic Violence” in Taylor-Browne J (ed) *What Works in Reducing Domestic Violence? A Comprehensive Guide for Professionals* (2001) p.239

MARAC, community based “outreach” services also provide a level of advocacy to victims of abuse who are not assessed as being at a high risk of harm.

Outreach support is available in most areas for people who are affected by domestic abuse but are not assessed as being at immediate risk of harm. Outreach support is provided within the community, generally on a face to face basis, at a suitable location. Support provided by outreach workers is identical to that which is provided by an IDVA and includes safety planning, building confidence and self-esteem, advice with housing and welfare benefits, support with attending court, legal advice, assistance with financial issues, help getting back to work and facilitating access to relevant agencies.⁹⁷ Traditionally this level of support for victims of domestic abuse was confined to refuge settings.⁹⁸ More recently the emergence of a CCR response to domestic abuse has led to an enhanced range of services being available within the community, which offer support to anyone affected by domestic abuse. Despite the term advocacy not generally being used within the outreach model, the support provided by outreach services fits the support that IDVAs provide which is termed “advocacy”. The support required by a victim of abuse, who will be coming from a position of fear and isolation, in negotiating housing, legal proceedings, welfare benefits and the criminal justice system necessitates a “fight for justice”⁹⁹ by an advocate. This is required in order to redress the abuses of power the victim has experienced. This is what is recognised as domestic abuse advocacy, regardless of the level of risk the victim is facing. The skillset needed to advocate for a victim at MARAC is the same as the skillset needed to support a victim through outreach.¹⁰⁰ Some of the mothers within this study were assessed as being at high risk of

⁹⁷ See <<http://www.refuge.org.uk/what-we-do/our-services/outreach-services/>> Accessed 29th July 2016

⁹⁸ Kelly and Humphreys, above n 95 p.240

⁹⁹ *ibid* p.240

¹⁰⁰ *ibid* p.251

harm, and had been referred to the MARAC, but some had not. Some of the mothers had been supported by an IDVA and some had been supported by an outreach worker. Their experiences of support were not distinguishable; all were supported in a way which would be recognised as advocacy. It is for this reason that within this thesis the terms “advocacy services” and “advocates” have been used to encompass both the IDVA and the outreach services who have engaged with the mothers.

3.3.2 The Setting

The meetings between the mother and her advocate are held in a diverse set of, largely neutral, locations. Service delivery guidance for domestic abuse advocacy services encourages accessibility for all victims, taking into account their specific needs.¹⁰¹ Due to the sensitive nature of the meetings a confidential and secure location is required. There is also a requirement for physical accessibility for all, regardless of a victim’s disabilities or their geographic location.¹⁰² Children’s centres, village halls, local authority meeting rooms and other community-based venues are therefore widely used and this was evident from examining the case files for this study. As noted above, One Stop Shops are also located within the community and domestic abuse advocates are required to have a presence at these sessions.¹⁰³

As discussed in the previous chapter, childcare is predominantly viewed as the responsibility of the mother and the abuser is unlikely to be available to care for the children when the mother visits an advocacy service. More pertinently, if the mother asked her partner to take care of their child she would be questioned about where she was going. Therefore, the

¹⁰¹ SafeLives, above n 85 pp.14-15

¹⁰² Women’s Aid *The Women’s Aid National Quality Standards* (2015) p.9

¹⁰³ Kent and Medway Domestic Abuse Strategy Group above n 71 p.5

meeting venues must be family friendly and safe as women will invariably bring their children. This is another reason that children's centres and public spaces are utilised by advocacy services to meet with abused mothers. Meetings also need to be conducted outside of the home, as the home is not safe. From examination of the advocates' case notes it was clear that frequently contact with the mothers was made by telephone, with regular, scheduled meetings taking place in neutral, family friendly and safe community-based venues.

The MARAC meetings are held in formal, board room style meeting rooms. As will be discussed in chapter five, the police are heavily involved with the MARAC process and therefore many of the MARAC meetings are held at local police stations. Although the mother is not present at the MARAC meetings, her relationship with her advocate is played out within this setting even in her absence.

3.3.3 The Structuring Force - Biopower

As introduced in the previous chapter, the term biopower "designates a range of technologies, knowledges and discourses used to analyse, control and regulate human bodies and populations."¹⁰⁴ The techniques of biopower are not overtly repressive or coercive. Instead, as Rose explains, the advent of biopower saw the "emergence of new ideas of what human beings are, what they should do."¹⁰⁵ This is what Foucault characterised as "normalising judgements"¹⁰⁶ which are administered to populations by professional experts, who can guide, advise, care and support.¹⁰⁷ People are then encouraged to decide how to live their lives with the advice of professional experts to guide them. Rose describes this

¹⁰⁴ Murphy, E "Expertise and Forms of Knowledge in the Government of Families" *Sociological Review* 51 (4) (2003) p.434

¹⁰⁵ Rose, N *The Politics of Life Itself: Biomedicine, Power and Subjectivity in the 21st Century* (2007) p.6

¹⁰⁶ Foucault, M *Discipline and Punish: The Birth of the Prison* (1991) p.183

¹⁰⁷ Rose, above 104 p.6

involvement of experts via quiet coercions,¹⁰⁸ which incorporate normalising judgements, as “government through freedom”.¹⁰⁹ The advice is given, frequently and by various means, and people are encouraged to exercise their autonomy and decide how to act, with the advice from the experts embedded in their minds. An example of this is in Murphy’s study into how pregnant mothers and mothers with new-born babies perceived how they had come to choose how they fed their babies. The midwives and health visitors were viewed by the mothers as being the experts on baby nutrition, over and above themselves and their own mothers or friends.¹¹⁰ This was because although the “lay” advisors had personal experience it was felt by the mothers that the “knowledge of universal relevance”¹¹¹ of the health professionals should be followed. Similarly, within the relationship between the mother and the advocacy services, the advocate can be recognised as the professional expert with universal knowledge. As introduced earlier in this chapter, domestic abuse advocacy services originated as independent, grass-roots organisations. The work of these organisations was developed within the voluntary sector by groups of women wanting to provide support to local women fleeing domestic abuse. The professionalisation of this work is a relatively recent development. This professionalisation can be recognised within the emerging requirements for advocacy services to undergo accredited training programmes, provided by national organisations such as SafeLives and Women’s Aid. The expectation for professional domestic abuse advocates to undertake their work as experts in the field of domestic abuse can be recognised within the SafeLives standards. These standards are explicit in their expectation for all domestic abuse services, whether IDVAs or outreach workers, to “provide training,

¹⁰⁸ Foucault, above n 105 p137

¹⁰⁹ Rose, N *Powers of Freedom: Reframing Political Thought* (1999) p.xxiii

¹¹⁰ Murphy, above n 103 p.449

¹¹¹ *ibid* p.450

feedback and support to other agencies and professionals in relation to their work with domestic abuse victims.”¹¹² This practice is termed “institutional advocacy” and involves the domestic abuse specialist continually reminding other professionals of the dynamics of domestic abuse, that the woman they are supporting is a victim of a crime, and that she is not responsible for the abuse she has been subjected to. The provision of domestic abuse awareness training to statutory sector, private sector and voluntary sector colleagues, and the practice of institutional advocacy are both expected practices for domestic abuse advocates and advocacy services.¹¹³ This situates the advocate as an expert on domestic abuse amongst their professional peers. One of the social workers I interviewed spoke about why she always accesses advocacy services for the mothers she supports; she was clear that she did not view herself as able to deal with domestic abuse without the assistance of the advocacy services:

“I am not the expert in many situations, well in any of them really...it’s about drawing on expertise from [advocacy service]. I couldn’t do my job as a social worker if I couldn’t get on the phone to [advocacy service].” (SW2)

If the advocate is the expert on domestic abuse, the mother is the subject of this expertise. An example of this expertise being applied is the use of the RIC tool. As introduced above, this tool was created by a criminal behavioural analyst, a role which identifies patterns of criminal behaviour in order to make predictions about how criminals will behave. The comparison of thousands of domestic abuse cases, to seek out common indicators in order to predict risk,

¹¹² SafeLives above n 85 pp.14-15

¹¹³ Hester, M *Domestic Violence Advocacy and Support in a Changing Climate – Findings from Three Recent Evaluations* (2011)

involves the normalisation of “risk” as a category of analysis. This categorising of women based upon risk can be problematic. For example, in her work on the state’s responses to forced marriage, Rosemary Hunter argues that the categorisation of women and girls into groups most “at risk” of forced marriage, based upon race, ethnicity and citizenship does not improve protection from forced marriage. Categorising women and girls in this way reduces options for those who do not fit into these categories, whilst imposing limitations, such as restricted foreign travel, on those who do fit into the categories.¹¹⁴ Similarly, the application of the risk assessment tool to the abused mother’s situation categorises her as a risk level.¹¹⁵ This prediction of risk is not always accurate.¹¹⁶ For example, in the Domestic Homicide Review¹¹⁷ case of Sarah¹¹⁸ it was found that the victim had been risk assessed three times prior to being murdered by her ex-husband. Despite the first risk assessment classifying the risk to her as high, the two subsequent risk assessments had classified her risk as standard, one of which was completed just days before she was murdered.¹¹⁹ Risk assessment should not be completed in isolation and the answers to the questions should be understood in the wider context of the victim’s situation. The creator of the RIC tool maintains that the completion of the RIC should be undertaken by a trained professional who should also use

¹¹⁴ Hunter, R “Constructing Vulnerabilities and Managing Risk: State Responses to Forced Marriage” in Fitzgerald, S (ed) *Regulating the International Movement of Women: From Protection to Control* (2011) pp.1-28

¹¹⁵ Robinson, A and Tregidga, J “Assessing and Managing Risk Among Different Victims of Domestic Abuse: Limits of a Generic Model of Risk Assessment?” *Security Journal* 22 (3) (2009) pp.190-204

¹¹⁶ Stanley, N, Chantler, K and Robbins, R “Children and Domestic Homicide” *The British Journal of Social Work* (2018) p.10

¹¹⁷ Domestic Violence, Crime and Victims Act (2004) S.9(3) A Domestic Homicide Review (DHR) is a statutory obligation which should take place when a death has occurred at the hands of an associated person. The purpose of a DHR is for lessons to be learnt by all agencies involved with the deceased. The guidance is available at <<https://www.gov.uk/government/publications/statutory-guidance-for-the-conduct-of-domestic-homicide-reviews>> (accessed 25th January 2017)

¹¹⁸ Available <<http://www.kent.gov.uk/about-the-council/partnerships/kent-community-safety-partnership/domestic-homicide-reviews>> Accessed 25th January 2017

¹¹⁹ Kent County Council *Domestic Homicide Review Sarah/2013 Executive Summary* p.6

their professional judgement when assessing risk.¹²⁰ In the case of Sarah, the risk assessments had been completed by police and she had not received support from an advocacy service. The use of the RIC tool alone was not able to predict that Sarah would be murdered. This case, along with other cases where women have been murdered despite having been assessed as facing a low risk of violence,¹²¹ illustrate the problematic use of universal assessment tools in identifying how much risk of death or serious injury a woman may actually be facing.

Advocates regard themselves, and are viewed by other professionals, as experts on the application of the RIC tool.¹²² The advocate's role as an expert on increasing safety, and therefore reducing risk, along with the mother's role as the subject of that expertise, is highlighted in a recent study by Howarth and Robinson which examined the effectiveness of the work of IDVAs.¹²³ In order to determine this, the study measured safety outcomes,¹²⁴ using a "severity of abuse tool"¹²⁵ and recording the "number of interventions received" by the victim.¹²⁶ There were no interviews or discussions with either the women or the IDVAs. The conclusion of the study was that "safety was achieved" following access to community resources and that advocacy intervention is a "promising strategy" for tackling domestic abuse. Similar to the RIC tool, the severity of abuse grid is another mode of "normalising judgement". The victim becomes a number on a form which aims to judge risk; this judgement

¹²⁰ Richards, L "Domestic Abuse, Stalking and Harassment and Honour Based Violence Risk Model: Practice Guidance for all Front-Line Staff (2016) p.3

¹²¹ Monckton-Smith et al. above n 33 p.15

¹²² Coy and Kelly, above n 69 p.92

¹²³ Howarth, E and Robinson, A "Responding Effectively to Women Experiencing Severe Abuse: Identifying Key Components of a British Advocacy Intervention" *Violence Against Women* 22 (1) (2016) pp.41-63

¹²⁴ *Ibid* p. 44

¹²⁵ *ibid* p.47

¹²⁶ *ibid*

informs the experts whether a specific intervention has been successful. There is no victim voice in this study, simply numbers and judgements based on numerical assessments.

The advocate, as an expert, is an “authority considered competent to speak the truth”¹²⁷ who is available for the mother with advice on safety and how to reduce risk. The advocate is also equipped with extensive knowledge of available options for the mother to choose such as moving to refuge or obtaining civil injunctions against her abuser, and expert advice on how best to help the children recover from witnessing abuse or how to navigate the benefit system as a single parent. The advocate possesses the knowledge that the mother needs, yet the mother is not forced to follow the advice of the advocate. As well as categorising the mother as a risk level, the biopolitical force also constructs her as a “type” of victim of abuse. She is either categorised as a victim who engages with the advocate, listens to and acts on the advice of the expert; or conversely as a victim who does not follow the advice of the advocate and is therefore judged as not “doing the right thing”.¹²⁸ An example of this can be seen in Murphy’s study, introduced above, where the mothers largely accepted that professionals held the universal knowledge about how best to feed their babies, before their babies were born. However, once their babies were born, the same mothers began to reject this universal knowledge, instead asserting that they were the experts on their own babies.¹²⁹ This is an example of how the subject may resist normalisation. However, as Rose argues, expert discourses enable governments to govern at a distance¹³⁰ by identifying certain practices as either healthy and therefore legitimate, or as unhealthy, and therefore illegitimate.¹³¹ The

¹²⁷ Rabinow, P and Rose, N “Biopower Today” *Biosocieties* 1 (2) (June 2006) pp.195-217

¹²⁸ Stnaley, Chantler and Robbins, above n 115 p.11

¹²⁹ Murphy, above n 103 p.453

¹³⁰ Rose, N “Governing the Enterprising Self” In Heelas, P and Morris, P *The Values of the Enterprise Culture* (1992) p.192

¹³¹ Murphy, above n 103 p.439

mother may choose to feed her baby her own way but if it is not in line with expert advice it may be viewed by others, and to some extent she may view herself, as having made an iniquitous choice. The mothers in my study as subjects of the advocate's expertise are similarly being "shaped, guided and moulded into [a person] capable of exercising [their] freedom."¹³² This freedom to choose is also problematic, as it is influenced by a professionalised, expert discourse, where the choices that are made can qualify or disqualify the mother as a "fit and proper member of the social order."¹³³ The mother has the opportunity to make decisions for herself that are not in line with those encouraged by the experts, or the "normalising judgements,"¹³⁴ but she will be judged if she does decide against taking the experts' advice.

It is important at this stage in the discussion to return to the subject of autonomy as a value, and specifically apply this value to the relationship between the mother, her abuser, and her advocate. In chapter one the concept of autonomy was discussed, and I noted that there may be an expectation that for the mother, exercising her autonomy would imply she would "choose freedom" and choose to end her abusive relationship. As has already been addressed, the abusive (ex)partner's behaviour negates the mother's autonomy. The abusive behaviour erodes choice, and lack of choice reduces the opportunity for the mother to act autonomously within the relationship. The role of the advocate is to create choices, by signposting to other specialists, creating opportunities for the mother to make changes whilst supporting her emotionally and practically. This is intended to foster the mother's autonomy to make decisions for herself, as she would be exposed to opportunities that she did not

¹³² Dean, M *Governmentality: Power and Rule in Modern Society* (1999) p.163

¹³³ Danaher, G, Schirato, T and Webb, J *Understanding Foucault* (2000) p.61

¹³⁴ Foucault, M *Discipline and Punish: The Birth of the Prison* (1991) p.183

previously know were available. This may lead to her feeling more able to make choices for herself, instead of acting in the way her abuser wishes her to act. However, as explained in chapter one, autonomy is not an end to itself, it is also a value which is vital for the mother to develop and exercise in order for her to navigate the child protection process and the raft of relationships she is expected to manage during this process. Therefore, the expectation upon her to behave in a way that is in line with any of the professionals, including the advocate, but which goes against her own wishes does not foster her autonomy.

The concern of this thesis is with the value of autonomy for the mother as a human being not merely as a victim of domestic abuse. Paradoxically, a victim of domestic abuse may be expected to listen to an expert and “choose freedom” against her will, as that is what may be regarded as a rational choice by an expert. However, this is not the mother’s choice and is therefore not promoting her autonomy. Jane Monckton-Smith argues that we must raise the status of victims of abuse in order to better respond to their needs. She describes how victims of abuse are judged for not leaving their abusive partners and regarded as “reckless” and “foolish” by many agencies.¹³⁵ However, she found through interviews with victims of abuse that they had successfully “safety planned” for themselves for years, surviving the abuse by the strategy of “devotion”.¹³⁶ The women she spoke to knew that leaving their abuser would be dangerous. They did not want to lose their children as their abuser had told them they would if they left him. So, they consciously adopted a strategy which had kept them alive for years. They chose what they believed to be the safest way to live and they developed a survival strategy in order to manage the risk they were faced with. Monckton-Smith argues that they should therefore be afforded greater respect and their abilities to manage their own

¹³⁵ Monckton-Smith et al. above n 33 p.105

¹³⁶ *Ibid* pp.105-107

risk should not be under-estimated. Indeed, any expectation held by the advocate for the mother to behave in a particular way, because as the expert on domestic abuse she knows best, is not the same as fostering the mother's autonomy.

The language used by Howarth and Robinson in the report introduced above, is indicative of the "quiet coercions" of biopower, and how the mother is considered to be the passive recipient of expertise. For example, the use of the term "interventions received" focuses on the advocate's involvement with the victim, as an expert who is intervening, advising, assisting and supporting the victim. The advocate is doing the "work" of an expert and the victim is the recipient of this work, receiving support and advice. The outcome measured to determine if this expert intervention has been successful is "safety" according to measurable criteria, but with no attention given to how this makes the subject of the intervention actually feel. The study forms a picture of advocacy services as a prescriptive, formalised service, doing expert work, with no apparent emphasis on the individual who is the recipient of the advocacy.

Within the MARAC setting the advocate is recognised as an expert on risk, but also as an expert on the mother and her situation. As noted earlier, the mother does not attend the meeting and the advocate speaks on her behalf. A study of MARACs carried out by Robinson and Tregidga highlights the paradox of the MARAC process. The study purports to be an examination of victims' views and experiences of the MARAC. The authors state that their aim is to determine "the extent to which [the victims] are able to live without violence following their inclusion in the MARAC."¹³⁷ This indicates that a discussion between professionals who

¹³⁷ Robinson, A and Tregidga, J "The Perception of High Risk Victims of Domestic Violence to a Coordinated Community Response in Cardiff Wales" *Violence Against Women* 13 (11) (2007) p.1130

may not have even met the victim, without her presence, can be regarded as her “inclusion”. A further difficulty with the Robinson and Tregidga study is the apparent high value that is placed on the MARAC meeting for increasing victims’ “ability” to live without violence. This emphasis on the MARAC meeting as the primary conduit for increasing the mother’s safety diminishes the value of any input the mother has had into helping herself to be “able” to live without violence. The irony is that whilst the mother is widely regarded as being responsible for ending the abuse within her relationship,¹³⁸ the Robinson and Tregidga study credits the MARAC process for ending the abuse. The MARAC as a process is principally a periodic meeting where various management level professionals¹³⁹ discuss the private life of victims of abuse. This is the process which appears to be credited with ending the abuse within the mother’s life. Whilst it is plausible to place some value on the information sharing which occurs within this meeting, as it increases awareness of the mother’s situation in order for the proper services to better respond to her needs, it is somewhat tenuous to suggest that it is this meeting which can be credited with increasing the mother’s ability to live without violence.

During an evaluative study into advocacy schemes across London, stakeholders stated that they viewed the IDVA as being central to the MARAC process and recognised IDVAs as the experts on domestic abuse.¹⁴⁰ The mother’s lack of physical presence at the MARAC meeting, her lack of knowledge of the discussions and decisions made during the proceedings and her lack of knowledge of the participants involved within the meeting leads to a distinct lack of opportunity for her to exercise her autonomy within the whole process. Robinson found in

¹³⁸ Meyer, S “Still Blaming the Victim? Women’s Narratives of Victim Desistance and Redemption when Seeking Support” *Theoretical Criminology* 20 (1) (2016) pp.75-90

¹³⁹ SafeLives *Toolkit for MARAC Representatives* (2015)

¹⁴⁰ Coy and Kelly, above n 69 p.87

her research that IDVAs take the weight of actions from the MARAC meeting and that the process relies heavily on IDVAs for their “framework of understanding” of the gendered dynamics of domestic abuse.¹⁴¹ However, the presence of the IDVA does not replicate the mother’s presence to the extent where the mother’s autonomy is promoted in the MARAC setting.

As introduced in chapter one, autonomy is the capacity to make decisions and plans for oneself, and is necessary in order to control one’s own life. The capacity for autonomy is specifically important for abused mothers within the child protection system because it is autonomy which will enable them to make decisions for themselves. The biopolitical force, which is present within the relationship between the mother and the domestic abuse advocate, structures the relationship in a way which could negate the mother’s autonomy. The normalisation of risk reduces the individual nature of each mother’s circumstances. Also, the mother becomes the subject of the advocate’s expertise and is judged against the advocate’s expectations of how she should be responding to the abuse. There is also a risk that a greater value is placed on the knowledge of the advocate, as an expert, than on the personal experiences of the mother as the subject of the expertise. The next stage of the relational framework is to identify the practices within the setting, to determine if these practices mitigate the biopolitical forces present, in order to promote the mother’s autonomy.

¹⁴¹ Robinson, A *Independent Domestic Violence Advisors: A Multisite Process Evaluation* (2009)

3.3.4 The Advocate's Practices

As introduced above, advocates are expected to work to a set of guidelines which inform their practice.¹⁴² A key component of the advocate's role is to provide "clients with a specialist and pro-active, risk led response, which reflects clients' individual risks and needs."¹⁴³ In order to determine the mother's individual needs, the advocate is supposed to ask about her situation, giving the mother the opportunity to share her thoughts and feelings in a safe space. The mother can expect not to be judged by the advocate¹⁴⁴ and the advocate is supposed to respond to the mother's interpretation of the situation with a safety plan.¹⁴⁵ This plan is specific to the mother, led by, agreed and ultimately owned by the mother. This practice is intended to indicate to the mother that she is the expert of her own experience.¹⁴⁶ This safety planning is informed by the risk assessment which is completed by the advocate whilst she speaks with the mother. The advocate is trained as an expert on risk, however the risk assessment is supposed to be a two-way process in which the mother is encouraged to participate by answering questions about her situation. The mother should be an equal participant in these discussions. The plans are supposed to include regularly reviewed actions for the mother, the advocate or another involved person to undertake. This process should provide the mother with a clear strategy upon which she can make decisions and plans for herself.¹⁴⁷ Nedelsky argues that providing support to someone who has not participated in

¹⁴² Safelives *Standards for Community-Based Domestic Abuse Services* (2015) Available <safelives.org.uk> Accessed 11th June 2018

¹⁴³ SafeLives above n 85 p.7

¹⁴⁴ Women's Aid *The Women's Aid National Quality Standards* (2015) p.7

¹⁴⁵ SafeLives above n 85 p.8

¹⁴⁶ This term is widely used in social care settings – people who have had personal experience of accessing health and social care services are recognised as "experts by experience". One example of how they are utilised in care services is that The Care Quality Commission involve them in policy development see <<http://www.choicesupport.org.uk/Professionals/professionals-experts-by-experience.html>> Accessed 21st September 2016

¹⁴⁷ SafeLives, above n 140 p.9

the design of that support reduces their autonomy because it removes any dignity from the process.¹⁴⁸ By engaging the mother within her own safety and support planning, the advocates are theoretically encouraging and assisting the mother to make changes for herself. Nedelsky argues that client participation is important for feelings of autonomy.¹⁴⁹ The mother is supposed to be encouraged to have some level of involvement in the design and development of the service. The intention is that the mother is not simply a passive recipient of the service she receives. The potential for normalising the risk levels due to the widespread use of the risk assessment tool is theoretically reduced because the expected practice of reflecting on the mother's individual needs encourages the advocate to look beyond the number of yes boxes ticked on the form. The advocate is expected to take into consideration the context of the answers to the questions whilst also employing her professional judgement when assessing the risk. This practice of treating each case individually and utilising the DASH RIC to structure the conversation about risk, rather than relying on it completely to inform the decision about the risk level, theoretically mitigates the biopolitical force which is present in the relationship between the mother and the domestic abuse advocate.

When interviewed about their experiences of working with the advocates, the mothers described a type of journey, which began at the initial meeting with the advocate and continued through to the end of the support. In the absence of interviews with the advocates, I used their case notes to add context to the case studies. I was able to easily identify the common themes of knowledge and choice from the interviews and the casefiles. These themes can be recognised as being consistent with the expected working practices of the advocates introduced above. Advocates are expected to utilise their knowledge to support

¹⁴⁸ Nedelsky, above n 63 p.140

¹⁴⁹ *Ibid* p.48

the abused mothers, but only when the mothers choose to access their knowledge. They are tasked with assisting the mothers to understand that there are options available to them, whilst helping them to access these options. From the mothers' accounts, their relationships with the advocates generally promoted their autonomy. However, inconsistencies in the advocates' practices arose when other professionals became involved in the relationship, for example, when the social worker's expectations were placed above the mothers, or at the MARAC where the advocate's status as expert led to her opinions being valued in place of the mothers' lived experiences.

3.3.4.1 Knowledge

A domestic abuse advocate should have specialist knowledge about risk assessing and safety planning. She should be knowledgeable about local services and support available to the mother, which she should utilise when safety planning.

M2's advocate was able to provide the space M2 needed to talk about her abusive relationship, which she told me was, "a great help where I have been able to recognise what's happening, that it wasn't right." M4 told me that when she met with her advocate she felt "comfortable and supported." M5 described her meetings with her advocate as being a safe space where she could speak freely without being judged and liked "having that confidentiality, someone I can just scream to about things...it felt good to do that." M6 said of her weekly sessions with the advocate, "I look forward to my sessions because I think I can have a bit of a rant about how he's been." M7 described the time when she started to receive support from her advocate:

"I didn't know if I was going forwards, backwards, in circles or whatever. She put me in the right direction...giving me advice...and

just having someone there to talk to about everything. We built up a relationship that I can go [regularly] and talk about things and she'll give me advice...

M7 described herself as having no confidence before she started working with her advocate. She said, "I don't know where the hell I was going in my head...my head was like fire..." She attributed an increase in her confidence to her advocate, saying "if it wasn't for [her] I wouldn't be this confident." She said it was important:

"to have somebody to actually open up to, and actually understand you...when you're feeling so isolated and alone and vulnerable and scared and horrible."

M9 explained that when she started working with her advocate she felt:

"relief...it's someone you can actually talk to about this without feeling judged...get some help, and some support, and be believed as well, I think it's a huge thing."

In addition to a safe space to talk through their experiences of domestic abuse, the advocates also assisted with practical advice. The mothers told me how their advocate had engaged with the police on their behalf, helped them with accessing protective civil orders and liaised with housing departments and social workers. M2's advocate had worked extensively with several statutory agencies. She had liaised with the social worker very regularly and with the local housing team based at the council, who were all trying to find a safe way for M2 to leave the marital home. M2 was very complimentary when I interviewed her about the liaison between the advocate and the other agencies, telling me that she did not even realise she had the

option to leave her home. M2 had stayed with her abuser for so long, because she feared becoming homeless. M3 spoke about the difficulty she had faced in finding out for herself how to access services, but said:

“once [my advocate] explained who did what, it made sense, but until then, it was like you go on the internet and...I was like, I need help...and oh my god now what do I do...? I’m going around in circles.”

M4 told me that everything she knew about what support was available to her was from the information given to her by the advocacy service. M3’s advocate referred her for counselling as her mood continued to be low following the criminal justice proceedings against her ex-partner. M4’s advocate referred her to a national charity who assist with accessing protective civil orders. M8 was referred by her advocate to housing related support, and her advocate had recorded in the case notes that she had encouraged M8 to attend a meeting with the housing support provider as her housing needs were a priority in her safety plans. Also, the case files for M5 indicate that she was encouraged to discuss her mental health issues with her GP and was referred by the advocate for parenting support. M4’s advocate arranged for numerous lock changes and repairs to her property due to the ongoing harassment of her ex-partner. M3 said of her advocate, “she was on my side, like my voice-piece. If something was going on that wasn’t right she was my representative, is how I saw it.”

3.3.4.2 Choice

It was clear from the interviews and the advocates’ extensive case notes that the mothers received a considerable amount of assistance from the advocates’ expertise. However, one factor which is vital to ensuring the mother’s relationship with the advocate promotes her autonomy is that she actively consents to the support. Accessing the advocate’s support was

described by some of the mothers as being on their terms, M3 told me, “if I want her she’s there, as and when.” M5 spoke in a similar way about the offer of ongoing support following the end of her abusive relationship, telling me that “I have my advocate’s number if I need it”.

Once in the relationship, the advocate’s role is to highlight the options available to the mother and assist her in accessing these options. When asked about choices, M3 said about her advocate,

“without her, like the stuff at the house to make it safe and secure...I wouldn’t have even known these things could happen...”

M2 told me that she had been satisfied with the support she had received from the advocacy service stating, “I think I’ve got what I’ve needed so far from them”, which gives some indication that she felt she had accessed them for support rather than their support being forced upon her. M2 explained that she initially felt reluctant to speak to anyone about the domestic abuse. She told me that “I know from the beginning I was...reluctant to admit what was happening to me and was in denial of it all.” Upon examining the advocate’s case files for M2 it was clear that the advocate persevered with attempting to speak with M2, who did not answer her phone on the first few attempts. However, once the advocate was able to arrange a time to meet, M2 went on to meet with her advocate on a fairly regular basis and at times it appears they were meeting weekly. When asked how meetings with her advocate made her feel M2 told me:

“I’ve never felt nervous...actually that’s not true, probably the first couple I was probably nervous because it was difficult for me...”

knowing that things weren't right and having to talk about it. And in some ways, it was nice to finally talk about it."

I asked her about what happened at the meetings with her advocate and she told me that "they've either been where I've been able to talk about how I'm feeling, or...it's helped with what I want to do, to leave...". M2 told me how her advocate gave her options and would tell her, "well you could do this, you could do that." This helped M2 to realise that "there are people out there [to help]." After a few sessions M2's advocate helped her to recognise that she had options other than staying in the abusive marriage, which she had been in for twenty years. Once she felt ready to leave her husband, she told me that her advocate had helped her with accessing relevant support to leave the marital home. The language used in M2's case notes indicates that her advocate tried to offer M2 choices rather than dictate to her. She used words like "I asked her to" and "I suggested to her." M7 also explained that the advocate gave her options and then left it up to her to decide what to do:

"she will talk it all out and make me make a decision. She wouldn't tell me how to do it, she would put it in terminology that I can do it. So, it's me making the choices and not her..."

M5 explained that her advocate "made me feel a bit more positive about things, gave me options of what I could do around things." She spoke specifically about the advice given by her advocate about applying for a non-molestation order:

"They've gave me choices around the injunction order thing. She said, 'it's your choice', like it's my choice, she'd support me...she gave me that choice."

From the advocate's case notes it was evident that it had taken her some time to develop a relationship with M5 as initially she did not answer her telephone. She had been referred into the advocacy service many times by social workers, but only engaged with the advocate following a self-referral, which indicated that she felt ready to access the support. The advocate recorded in her case notes, "she thought she could do it all on her own last time and this time she thinks she could do with some support." When I spoke with M5 she was very positive about the support she had received from the advocacy service, telling me that, "everyone...has been really good...I have worked with [them] for some time now and they've never mucked me about." The advocate's case notes indicate that M5 had accessed the advocacy service via the local drop in when she wanted support and when I spoke to her she told me that the one to one support provided by the service happened "when it was needed." The way M5 accessed the advocacy service herself at local drop in sessions indicates she may have entered into the relationship with the advocates willingly. When M5 was ready, she accessed the service on her own terms and not just when she was told to by her social worker. M5 compared her relationship with her advocate to that which she had with her social worker and said that "instead of looking down on me...[advocate] helped me with a lot of things." She was very aware that the space she had been given by her advocate to make decisions for herself had made her feel more able to make these decisions. She told me about a time when the advocate assisted her with writing the supporting statement for a non-molestation order application. She explained that when the statement was handed to her, it was up to her to decide when she was ready to attend court and apply, she had the statement prepared for whenever she was ready to do this. She told me that it made her think harder about the decision as it was *her* decision to make. This indicates that the combination of support and space that she was given by her advocate enabled M5 to use her autonomy to plan for her

own future. It is evident from the advocacy case files and from the social worker's case files that it was during this time that M5 began to proactively make plans to protect herself from her ex-partner.

Some of the mothers described their relationship with their advocate as a friendship. M3 said that her advocate "made me feel very comfortable, like she's my friend actually..." M7 also described her advocate as "like a friend." The advocate's involvement with the mother when she needs it most is positive and this flexible access to support is encouraged by SafeLives guidelines. However, it also became apparent from speaking to some of the mothers, and from examining the advocates' case files, that there was a risk of the mothers becoming dependent on the advocate. Leading Lights guidance attempts to mitigate the risk of dependency by requiring "the service to encourage their clients to act for themselves and engage with services that can help them."¹⁵⁰ The role of the advocate is intended to be to facilitate the changes the mother wants to make, and the support is not intended to be long term. This expected practice can be recognised as actively encouraging autonomous thought and behaviour in the mother. The ability to seek and access ongoing services is supposed to reduce the level of dependency upon the advocacy service. Nedelsky argues that choosing autonomously "takes some kind of conscious work."¹⁵¹ It is not just important to enable autonomous thought, but also to actively encourage it. This is especially important for abused mothers who have been actively discouraged from thinking for themselves for so long. Nedelsky also cautions against "making autonomy the casualty of collective responsibility."¹⁵² As previously discussed, some level of dependency is inevitable in all human beings' lives,

¹⁵⁰ SafeLives, above n 85 pp.12-13

¹⁵¹ Nedelsky, above n 63 p.62

¹⁵² *ibid* p.140

however with so many agencies having a duty to support the abused mother, there is a risk of her becoming dependent on supportive services. By encouraging the mother to move on towards less intensive support, and eventually towards no formal support, this dependency can be reduced and in turn her reliance upon her own plans can become her priority. The following case studies illustrate how the mother's dependency on her advocate can be a real risk to her autonomy.

M6 met with her advocate every week for ten months. This was at a time and in a location which she had chosen to be suitable for her needs as a working mother. M6 told me in her interview that her advocate would see her outside of the advocate's work time if she needed to speak to her urgently. She told me that she was someone who gets stressed about even little things and that until she met her advocate she had not been able to speak to anyone about this. During her interview she did not indicate to me that she had spent her time with her advocate dealing with her historic abusive relationship but said that she would talk about whatever was worrying her that week. The level of interaction that M6 had with her advocate was intense, and from examining the paperwork it is clear that M6 utilised these meetings to speak about her employer, her appraisal at work, concerns about colleagues at work and many other matters regarding issues in her life which were unrelated to her abusive relationship. There did not appear to be any end date for the support agreed and when the support did end it would appear from the case notes that it was due to the advocate leaving the advocacy service. M6 called the advocacy service on various occasions very upset that she had been left with no outlet for her stress. She indicated that she felt abandoned. The service provided to M6 had encouraged dependency upon the advocate, to the point where the case notes recorded that M6 had been signed off sick from work due to the support ending.

M7 had been working with the advocacy service for over five years. She told me during her interview that her advocate was there for her whenever she needed her and that “I know they’re not allowed to take their work home with them, but, I know...I could ring her,” indicating that she called her advocate outside of working hours. The case notes for M7 are especially lengthy, indicating an extensive number of meetings and telephone calls, which were often daily. M7 told me that she took no credit for making any changes in her life, but that it was *all* down to her advocate. Following her advocate leaving her post, M7 continued to call the advocacy service very regularly, stating that she felt that she needed to speak to somebody daily. It would appear from what she told me in the interview, and what is evident in the case files, that M7 felt a dependency upon the advocacy service which was not conducive to her thinking or acting for herself.

Although the mothers I spoke to generally felt that they had a choice in accessing the support of the advocates, one area of possible concern which I noted after examining the advocates’ case notes was the value placed on the “engagement” of the mother. Throughout the case notes for all of the mothers there are references to how well they “engaged” and how they were “doing the right thing”. Nedelsky notes that “playing someone’s game well is not the same as defining one’s own path”¹⁵³ and warns that the external appearance of manipulation of one’s environment could be more about knowing how to comply in order to reap the benefits, than acting autonomously following the expert advice they had been given. Therefore, the mothers in some circumstances may have been acting or speaking in a way that appeared to correspond with their advocate’s opinions, despite not agreeing fully with the expertise of the advocate. M4 is an example of someone who may have been playing

¹⁵³ Nedelsky, above n 63 pp.134-135

along with the advocate's game, rather than defining her own path. M4 had been referred into the advocacy service as part of her child protection plan. Following these external referrals, the advocate's case notes show long periods of time when she was not able to contact M4. She was either not answering her telephone or not attending pre-arranged meetings. The advocate's case was closed on various occasions due to M4 "not engaging." It would appear from the case notes that the social worker called two months later to ask if the advocate had been meeting with M4 and asking if she could continue to attempt to call her. The advocate advised the social worker that "[M4] isn't sure that she needs or wants support" and recorded her conversation with the social worker stating that:

"[the social worker] says she doesn't think that M4 is able to make the right decisions when it comes to [abuser] but understands that there is no point working with her if she doesn't want to work with me."

M4 did not appear to want to access support from the advocacy service, as she had not answered the calls or responded to voicemails and text messages left, but the advocate continued to attempt to contact her at the social worker's request. Eventually, one month later the advocate met with M4. During this meeting, M4's mother was present, and the advocate advised the social worker the next day that:

"it is quite hard work getting anything out of [M4] when her mum is there as she looks to her mum for answers, so I have booked her in next week...for a couple of sessions alone..."

All of the above indicate some reluctance on M4's part not only about attending a meeting with an advocate, but to even speak with the advocate. M4 may have taken her mother to

the meeting as a support and the advocate stopped this by insisting that the next meeting should be conducted without M4's mother present. It would appear from the case files that the advocate continued to liaise with various agencies on M4s behalf, despite the absence of any conversations with M4. By continuing to take actions on M4s behalf, seemingly without M4's consent to do so, the advocate is negating the mother's autonomy. The motivation for the advocate may have been to assist M4, however, by acting for M4 without her permission the advocate could not know if she was progressing the situation in line with M4's wishes and feelings. In fact, M4 may have been exercising some degree of autonomy by resisting the expertise of the advocate. It could be argued that mothers who are in abusive relationships exercise their autonomy by resisting support from professionals. This could be the only time they feel they have a choice, whilst the rest of their life feels as if it is completely out of their control. This is a situation where the advocate has the power of an expert and overrides the mother's wishes, to the detriment of the mother's lived experiences.

The intended function of advocacy as representation for the mother may offer her the support of an advocate with the ability to articulate on her behalf and positively promote her best interests. Lorraine Code discusses whether advocacy is an appropriate way of achieving autonomy for oppressed groups. She begins by offering an argument in favour of advocacy, stating that "ordinary women's voices...often go unheard"¹⁵⁴ and that they require "expert advocacy to claim a serious hearing."¹⁵⁵ She tempers this with a warning that advocacy can "threaten a renewed silence that would replicate oppressive patterns of hierarchical expertise."¹⁵⁶ She gives an example from the field of medicine, where nurses act as

¹⁵⁴ Code, L "The Perversion of Autonomy and the Subjection of Women" in Mackenzie, C and Stoljar, N *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self* (2000) p.196

¹⁵⁵ *Ibid* pp.196-197

¹⁵⁶ *ibid* p.197

intermediaries between patients and doctors. These relationships are “structured around assumptions of a patient’s passivity” where the patient, despite being the person experiencing the illness, requires the nurse to represent her best interests, whilst the doctor is recognised as “knowing best” due to their medical training.¹⁵⁷ The patient’s own personal experience of her illness appears to require verification by a person with expert medical knowledge. As Susan Wendell observes, “my subjective descriptions of my bodily experience need the confirmation of medical descriptions to be accepted as accurate and truthful.”¹⁵⁸ This is similar to the need for the abused mother’s situation to be risk assessed by an expert and presented by the advocate to a group of management level professionals, in order for her situation to be assessed and her experiences validated. Despite the advocate purporting to know the mother’s wishes and feelings and presenting them on the mother’s behalf within the multi-agency setting, the advocate’s involvement is not a substitute for the mother’s personal involvement in the process and is therefore not supportive of the mother’s autonomy.

M4’s experiences are in complete contrast to M2’s experiences, which may have been due to the fact that M2 was ready to end her relationship, and actively consented to a referral into the advocacy service. Conversely, M4 was referred to the advocacy service as part of her child protection plan, which will be discussed in greater detail in the next chapter. The mothers’ motivation to make changes to their lives appear to be key to the relationship they have with their advocate. Those who entered the relationship willingly, or even sought out the support

¹⁵⁷ *Ibid* p.191

¹⁵⁸ Wendell, S *The Rejected Body: Feminist Philosophical Reflections on Disability* (1996) p.122

themselves, appeared to have a more “equal” relationship with their advocate, despite the inevitable power imbalance due the advocate being a biopolitical expert.

3.3.4.3 The MARAC

Within the MARAC setting the advocate is regarded as the expert on the mother. The mother’s absence indicates a lack of active involvement in the process and in some cases a lack of consent. SafeLives’ expected practices are intended to mitigate the risk of the mother’s voice being lost. They require that the advocate is an active part of any multi-agency response on behalf of the mother, and especially “with [the] local MARAC...This includes prior contact, attendance and engagement at the meeting, and continued client support.”¹⁵⁹ These expected practices should encourage the advocate to keep the mother central to multi-agency discussions, by regularly communicating with her, and liaising with relevant agencies on her behalf. The importance of “prior contact” with the mother, is specifically intended to ensure that the advocate has information on the current situation, obtained directly from the mother before the meeting. The advocate is expected to be the voice of the mother at the MARAC meeting so must obtain the mother’s wishes and feelings in order to achieve this. However, the expectation of “prior contact” is ambiguous as it does not indicate the form the contact should take, whether this should be a face to face conversation, a telephone call or even a text message. It does not specify the expected length of the contact or the quality of the information gathered, for example whether a very short telephone call is enough or if there is an expectation for a specific depth of information to be gathered prior to the MARAC. An example of this prior contact not taking place was identified in M4’s case notes. The advocate recorded that following a referral for support, she called M4 on her mobile phone

¹⁵⁹ SafeLives, above n 85 pp.20-21

and also sent text messages yet was unable to contact her. By the time of the MARAC meeting, the advocate did not have up to date information from M4 to present. As will be discussed, questions were raised at this MARAC meeting about the credibility of M4 as a victim of domestic abuse. The advocate was unable to respond to these accusations as she had not had prior contact with M4 to find out her version of events.

None of the mothers I interviewed who had been the subject of a MARAC were aware of what information had been shared at the MARAC, and most did not know that the MARAC had even taken place, indicating a lack of real consent in the process. This illustrates a discrepancy between the mothers' self-determination and the protocols of the MARAC process which do not include the mother.¹⁶⁰ The mother should be viewed as the expert of her own situation but the professionals within the MARAC do not credit her with this. At the meeting, the advocate is also expected to challenge multi-agency professionals on behalf of the mother if the discussion or decisions made are not in her best interests, for instance, if a decision is made by a participant of the MARAC about the mother's situation which the advocate knows will place her at risk of harm. The MARAC as a process does not promote, or even seemingly consider, the mothers' autonomy. Her lack of physical presence cannot be wholly replaced by the advocate's presence, even if the advocate attends the MARAC equipped with an account of how the mother feels and views her situation. The advocate will be representing the views of various mothers within one meeting and cannot properly provide the same level of understanding of each of the mothers' experiences as the mothers would communicate themselves. The advocate cannot know how each mother would respond to questions raised by other professionals at these meetings. The presence of the advocate at the MARAC, and in

¹⁶⁰ Coy and Kelly, above n 69 p.101

other multi-agency settings, does ensure that there is *some* representation of the mother's views, however the accurate representation of the mother's feelings is reliant on the ability of the advocate to understand how she is feeling about all aspects of her individual situation. As illustrated earlier in this chapter, abusive relationships are complex and although the advocate may do what she believes is best for the mother, she cannot express the complexities of each of the relationships in the same way as each person who has directly experienced these complexities. The minutes from the MARAC where M2's case was discussed state that "the suspicion is that M2 may be letting [partner] back into the home". This indicates a level of judgement made by those at the MARAC which does not appear to consider the facts, namely, that the bail conditions imposed on her partner had ended, the house was mortgaged in joint names and there was no injunction preventing him from entering his home. It was not a matter of her "letting him in" to the home, but of her abuser exercising his legal rights to enter his own property. There is no evidence that M2's advocate challenged this judgement at the MARAC.

At the MARAC meeting where M4 was discussed, her abuser's probation officer was recorded as stating that she thought M4 was "giving him mixed messages about whether she wants him back or not." He had denied to probation that he had been to M4's house at all, even though the police had arrested him at the property, following a break in. Within the same set of minutes, it was recorded that the abuser's attendance at a court ordered perpetrator programme was poor. The minutes stated that when he did attend the programme he had trouble recognising that his behaviour was abusive, which the probation officer stated was due to him being "rigid in his thinking". The family's social worker reported that they had no

knowledge of M4 intending on returning to the abuser. In her interview, which was only a short time after the above MARAC meeting, M4 told me she just wanted the police to:

“catch him...I think some people need to learn more about domestic violence...because they don’t realise how scared women actually get...they shouldn’t act like they’re wasting their time...”

This did not sound like a person who wanted to reinstate their relationship with the abuser. The MARAC attendees appeared to accept from the abuser’s probation officer that he had not been harassing M4 and she had been confusing him with mixed messages. With this point of view in mind, a decision was made at the MARAC not to charge him for four breaches of the non-molestation order. This is an example of a complete disregard for the mother’s autonomy. She had asked to be protected and instead the voice of the abuser became central to the proceedings, and she was not protected. There is no record of the advocate representing the concerns and wishes of the mother at this meeting; in fact the minutes indicate that the advocate informed the MARAC that M4 was difficult to support as she “engages and disengages.” The minutes also indicate that there was an action item for the advocate to update M4 on the MARAC, as well as an action item to, “discuss the various orders she has against [abuser] and how to use them properly.” Following the MARAC meeting, the advocate noted in her case files:

“the client has been contacting her perp and undermining the orders that are in place. The client has been giving the perp mixed messages about the relationship and he is very confused about whether the relationship is on or off.”

This is stated as fact, seemingly based upon what the advocate heard from the abuser's probation officer. A few days after this MARAC an email was sent from a police officer to the advocate asking her to speak to M4 and to "go over the implications of undermining court orders in place and to talk to [M4] about the relationship." There is no evidence from the case notes that the advocate contacted M4 about this or anything else following this final MARAC meeting. M4 indicated to me that although she was aware that her case had been discussed twice at MARAC, she had never been given any information after the meetings. There is no indication from this case study that the advocate's presence at the MARAC promoted M4's autonomy.

3.3.5 Conclusion

The mother's relationship with a domestic abuse advocate should begin with the mother's full and informed consent. If the SafeLives guidance is adhered to by the advocate, without the full involvement of the mother and with the central emphasis only on risk, safety and the normalisation of these factors, the mother's autonomy is not promoted by her relationship with the advocate. However, if these practices are adhered to with the mother's involvement central to the day to day work of the advocate, the biopolitical force could be mitigated, the advocate and the mother can work together equally to develop safety plans, and the mother's autonomy could be properly promoted. The expected practice of encouraging the mother to act for herself is a practice which is wholly intended to promote the mother's autonomy. This practice is intended to reduce the mother's dependency on the advocate, and if this practice was to stay central to the work of the advocate the mother's autonomy could be promoted throughout their relationship. This is difficult in the case of the MARAC as the process is not conducive with encouraging the mother to act for herself.

Working with the advocates appeared to be good for the mothers' autonomy when they were presented with options and were encouraged to make their own choices. There was a concern that some of the mothers appeared to be depending on the advocate for continued support once the domestic abuse issues were resolved and this in itself does not promote autonomy. In fact, this can transfer any dependency the mothers had previously had on their abusers, onto dependency upon a professional. Some of the mothers said they saw the advocate as a friend and whilst this is positive in terms of having a friendly face within the process, this appeared in some of the cases to cross a boundary where some of the mothers were in constant contact with the advocate, and this did not appear to be discouraged by the advocates.

Another concern was around the apparent value placed on the advocate confirming "engagement" with their service and how this is viewed as a positive indicator by other professionals, especially social services, of the mother being ready to "change". This can be recognised as having an element of victim blaming, as the implicit suggestion is that the mother had some way of changing the abuser's behaviour and working with an advocate seemed to be widely accepted as the vehicle to do this. As observed by Nedelsky, the mothers may have been playing the game rather than being fully in agreement with what the advocate, as the expert, was advising them.

Within the multi-agency setting the expertise of the advocate begins to erode opportunities for fostering the mother's autonomy. In some of the case studies it was clear that more value was placed on the advocate's opinion than on the mother's personal understanding of her situation. In two of the cases there is evidence that at the MARAC the advocates did not challenge the other professionals' negative opinions of the mothers' situations. The MARAC's

practice of excluding the mother from the proceedings negates her autonomy, despite the attempt to reinstate this with the involvement of the advocate. There is evidence in some of the case studies that the advocate did not properly gauge the mother's wishes and feelings prior to the MARAC, and the advocates rarely recorded in their notes that they had fed back the discussions that had taken place at the MARAC. Although the objective of the MARAC is to ensure information sharing amongst professionals, in reality it appears to be a paper exercise with no consideration in place regarding the mother's autonomy, beyond the advocate being asked the mother's wishes and feelings at the start of the process. The MARAC will be discussed in further detail in regard to the police's involvement with the process in chapter five. The next chapter will examine the relationship the mother has with her social worker.

Chapter Four - The Abused Mother and the Social Worker

4.1 Introduction

This chapter will examine the relationship between the abused mother and the family's social worker. Children who live in a home with a violent parent are deemed to be at risk of significant harm¹ and may subsequently be made the subject of a child protection plan. Within the child protection process the social worker is responsible for safeguarding the welfare of the children. The social worker's predominant role is to implement the child protection plan and to coordinate the child protection process as a whole. The social worker is therefore pivotal to the process and is likely to have the most frequent contact with the family. The chapter will begin by introducing the statutory framework and procedures within which the child protection process operates. The relational framework will then be applied to the mother's relationship with her social worker. The setting, or settings, within which the relationship exists will be identified. This will be followed by an examination of the structuring forces of juridical power, biopower and gender which are all present within these settings. The social worker's practices will then be examined in order to determine how they may mitigate the structuring forces to promote the mother's autonomy.

4.2 Statutory Framework for Child Protection

The Children Act 1989 forms the basis of the statutory framework for child protection. There are two provisions within Part III of the 1989 Act which require the local authority to investigate a child's welfare; either where a child is found to be "in need",² or where a child may be "at risk of harm."³ In the first instance, a child is "in need" if he is unlikely to achieve

¹ Adoption and Children Act 2002 s.120

² Children Act 1989 s.17

³ Children Act s.47

or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health and development without the provision for him of services by the local authority; or his health and development is likely to be significantly impaired, or further impaired without the provision for him of such service.⁴ Section 17 of the 1989 Act places a general duty on the local authority to provide services, in order to safeguard and promote the welfare of those children found to be in need, and to promote the upbringing of those children within their families.⁵ Under s.47 of the Act, the local authority has a duty to investigate the welfare of a child living within their area when they have “reasonable cause to suspect that a child is suffering, or likely to suffer, significant harm.”⁶ In these circumstances a local authority must make “such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child’s welfare.”⁷ If the local authority is refused access to the child by the child’s caregivers when they are attempting to carry out their investigations, or the child is at risk of immediate harm, they can apply to the court for an Emergency Protection Order.⁸ Anyone can apply for an Emergency Protection Order if there is:

“reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to accommodation provided by or on behalf of the applicant.”⁹

⁴ Children Act s.17(10)

⁵ Children Act s.17(1)

⁶ Children Act s.47

⁷ Children Act s.47(1)(b)

⁸ Children Act s.44(1)(b)

⁹ Children Act s.44(1)(a)(i)

An Emergency Protection Order transfers parental responsibility to the applicant¹⁰ and can last up to eight days, although the local authority can apply for an extension of up to 15 days.¹¹ The police also have the ability to safeguard against immediate harm, without requiring a court order, through the use of police protection. If a police officer has reasonable cause to believe that a child would be likely to suffer significant harm, then the child can be removed by the police officer to suitable accommodation.¹² For example in *Re M (A Minor) (Care Order: Threshold Conditions)*¹³ police removed a child from a home where they had entered to find the father had murdered the mother. Police protection can last up to 72 hours, and parental responsibility is not affected.

Two further orders available to the local authority when safeguarding children at risk of significant harm are the Care Order¹⁴ and the Supervision Order.¹⁵ These orders are longer term solutions for the local authority to protect children. A Supervision Order aims to give the local authority some control over the child, whilst parental responsibility remains with the parents. Conditions can be attached to a supervision order, for example parents could be compelled to allow a social worker regular access to their child, or prevented from leaving the country without permission from the courts. A child can only be taken into the care of the local authority through the provision of a Care Order, the effect of which is to transfer parental responsibility to the local authority. The person who holds parental responsibility is able to make decisions about the child including where they will live.¹⁶ The local authority can

¹⁰ Children Act s.44(4)

¹¹ Children Act s.45(1)

¹² Children Act s.46 (1)

¹³ [1994]2 AC 424

¹⁴ Children Act s.33

¹⁵ Children Act s.35

¹⁶ Children Act s.3

apply for an Interim Care Order¹⁷ if there are grounds for a Care Order but it is decided that the child can stay at home; the child can subsequently be removed from the home at any time until the order is revoked. Grounds for a Care Order or a Supervision Order are the same. Initially, both requirements within the threshold criteria under s.31 of the 1989 Act must be satisfied. The first requirement of the threshold criteria is that “the child is suffering or is likely to suffer significant harm”; this must be proven on the balance of probabilities.¹⁸ In *Re A (A Child)*¹⁹ Sir James Mumby reminded social workers that the likelihood of the child being at risk of significant harm should only be assessed based on evidence and not on suspicion or speculation. The second requirement of the threshold test is that the harm is attributable to the care given or likely to be given to the child not being what it is reasonable to expect a parent to give.²⁰ The harm could be deliberately inflicted, or due to negligence of the parent or failure to protect the child from harm.²¹

The concept of significant harm was introduced by the Children Act 1989²² as the threshold that justifies compulsory intervention into family life. “Harm” is defined as “ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another.”²³ “Development” is defined as “physical, intellectual, emotional, social or behavioural development”, and “health” means either physical or mental health.²⁴ In terms of “significant harm”, although “minor shortcomings in health or minor deficits in physical, psychological or social development should not require

¹⁷ Children Act s.38

¹⁸ *Re A (A Child) (No 2)* [2011] EWCA Civ 12

¹⁹ [2015] EWFC 11

²⁰ The alternative part of this requirement concerning a child being beyond control is not relevant to this study; therefore, I will not be discussing it here.

²¹ *Re A (Children) (interim Care Order)* [2001] 3 FCR 402

²² s.31(9)

²³ Adoption and Children Act 2002 s.120 amended the definition of harm in Children Act s.31(9)

²⁴ *ibid*

compulsory intervention”,²⁵ cumulatively these minor incidents can result in significant harm if they have a lasting effect on the child.²⁶ The generally accepted definition of “significant” is that which was found in *Humberside CC v B*²⁷ to be “considerable, noteworthy or important.”²⁸

The two-part threshold criteria should then be followed by the welfare test, which also has two parts: the first part requires that the making of the order would promote the welfare of the child²⁹ and the second part that making the order is better for the child than making no order at all.³⁰ When deciding whether the making of an order is in the child’s best interest, the checklist in s.1(3) of the 1989 Act must be taken into account. In relation to the second part of the welfare test, in *Re B (A Child)*³¹ Baroness Hale held that care orders should only be made when “nothing else will do”. She added that the welfare test should include determining whether the child would be safe staying with their family if the family were provided with ongoing support by the local authority.

4.3 The Child Protection Process

The child protection system in Britain requires the effective coordination of child protection agencies and good communication between professionals from many other agencies.³² The purpose of this coordination and communication is to safeguard children who are at risk of harm.³³ If *anyone* is concerned about a child being faced with the risk of harm they can make

²⁵ Department of Health *The Children Act 1989 Guidance and Regulations* (1991) para:3.2

²⁶ *ibid*

²⁷ [1993] 1 FLR 257

²⁸ At 613

²⁹ Children Act s.1(1)

³⁰ Children Act s.1(5)

³¹ (Care Proceedings: Threshold Criteria) [2013] UKSC 33

³² Colton, M et al. *An Introduction to Working with Children: A Guide for Social Workers* (2001) p.147

³³ HM Government *Working Together to Safeguard Children* (2015) p.8

a referral into the central Children's Services³⁴ department relevant to the child's location. Referrals can be made through local authority websites, local telephone referral lines or through the post.³⁵ Once a referral is received by the central duty team³⁶ a decision must be made by the duty social worker within one working day as to what action will be taken.³⁷ To aid this decision the duty social worker makes contact with all other relevant agencies to determine their current or historic involvement with the family.³⁸ If there is a reasonable belief that the child is at risk of significant harm,³⁹ the case will be passed to the child's local area office and a social worker from the early intervention and assessment team⁴⁰ must begin an initial assessment to decide if any immediate child protection actions should be undertaken as set out in s.47 of the Children Act 1989.⁴¹ The initial assessment must be completed within seven days, and the protocols for assessment vary between areas.⁴² The purpose of the assessment is to gather important information about a child and their family; to analyse the child's needs, the level of risk they face and harm they are suffering; to decide whether the child is a "child in need" or if they are in need of "child protection"; and to begin to provide the support required to address the needs identified.⁴³ If during this assessment

³⁴ Children's Services is the name which replaced Social Services in 2015.

³⁵ See <http://www.kscb.org.uk/worried_about_a_child.aspx> Accessed 12th June 2018

³⁶ Following the introduction of the requirement in Working Together to Safeguard Children 2015, for local authorities to provide 'early help' to families within the parameters of social work teams, many local authorities have changed the titles of the teams of social workers who support children and their families. To ensure anonymisation of my research data I will continue to use generic terms of social work teams as using specific titles could identify the geographical locations of my research. I have not included an explanation of early help provision as this element of support has been introduced since I conducted my case studies and therefore none of the mothers I spoke with had experience of working with early help teams.

³⁷ HM Government, above n 33 p.26

³⁸ Kent and Medway Safeguarding Children Board *Local Safeguarding Board Procedures* s.2.1.6 ss.6

³⁹ *ibid* s.2.1.2

⁴⁰ As above, I have used this term as it is generic, however the name of the team which conducts initial enquires will differ across the Country.

⁴¹ HM Government, above n 33 pp.18-19

⁴² *ibid* p. 27

⁴³ *ibid* p.25

there is reasonable cause to suspect a child is suffering, or likely to suffer significant harm an immediate strategy discussion should take place.⁴⁴

The current national guidance provided in the 2015 *Working Together* document suggests that the next phase of assessment, which is the core assessment, should be treated as a continuation of the initial s.47 assessment.⁴⁵ The timescale for the core assessment to be completed is within 45 days of the initial referral.⁴⁶ A core assessment is generally necessary if the issues raised within the initial assessment are complex or child protection concerns are raised during the initial assessment.⁴⁷ The core assessment must follow the national assessment framework⁴⁸ and must include parenting capacity, family and environmental factors, and the child's developmental needs.⁴⁹ During the assessment and within 15 days of the initial strategy meeting following child protection concerns, an initial child protection conference must be held.⁵⁰ The purpose of this conference is for information to be shared within a multi-agency setting in respect of all the children within the household in question. Members of the immediate family are invited to this conference.⁵¹ The initial child protection conference is chaired by a senior social care professional who is independent from the team leading the s.47 investigations.⁵² It is the role of the chairperson to facilitate a multi-agency discussion in respect of the views of all relevant professionals as to whether the child(ren) in question need to be subject to a child protection plan.⁵³

⁴⁴ *ibid* pp. 36-37 and Kent and Medway Safeguarding Children Board above n 38 s.2.1.5

⁴⁵ *ibid* pp. 45-46

⁴⁶ *ibid* p. 26

⁴⁷ Kent and Medway Safeguarding Children Board, above n 38 s.2.1

⁴⁸ HM Government *National Assessment Framework for Children in Need and Their Families* (2000)

⁴⁹ *ibid* p.22

⁵⁰ Kent and Medway Safeguarding Children Board, above n 38 s.2.1.7 ss.3

⁵¹ *ibid* ss.4

⁵² *ibid* ss.13

⁵³ *ibid* ss.1

If the decision from the conference is that the s.47 threshold has been reached for the child to be subject to child protection, a core group membership will be established.⁵⁴ This membership is made up of relevant professionals who attended the child protection conference. The core group must meet within 10 days of the initial child protection conference⁵⁵ although local guidance applies to this timescale.⁵⁶ The core group meets every four to six weeks⁵⁷ and is responsible for formulating and implementing the child protection plan which would have first been outlined at the child protection conference.⁵⁸ The lead professional of the core group is the social worker allocated to the case,⁵⁹ and their role is to coordinate actions by the other members of the core group in line with the child protection plan.⁶⁰

Within three months of the initial child protection conference a review conference, involving the family, must be held⁶¹ to discuss current levels of harm and decide if actions carried out to date have reduced the level of harm, or if subsequent actions must be taken.⁶²

As discussed in the statutory framework section above, court orders are available to social workers to place children in local authority care if they believe the children are at risk of significant harm. One mother in my study had been subject to an application for an emergency protection order by her local authority, this will be discussed briefly in chapter six in relation to her experiences within the family court. For the purposes of my study I will be

⁵⁴ Kent and Medway Safeguarding Children Board, above n 38 s.2.1.9 ss.6.2

⁵⁵ *ibid* ss.6.3

⁵⁶ HM Government, above n 48 p.24

⁵⁷ *ibid* ss.6.4

⁵⁸ *ibid* ss.6.1

⁵⁹ *ibid* ss.4

⁶⁰ *ibid*

⁶¹ Kent and Medway Safeguarding Children Board, above n 38 s.2.1.10 ss.3

⁶² *ibid* ss.2

concentrating on mothers whose children were subject to either a child in need or a child protection plan, whilst still living in the family home. This is because I am interested in the expectations placed upon the mother, as the main carer of her child; and it is for these reasons that I will not go on to explore the process of removing children from their parent's care when child protection plans are deemed not to be working.

4.4 The Mother's Relationship with the Family's Social Worker

Whilst the mother's child is subject to a child protection or child in need plan, she will spend a high proportion of her time with the family's social worker. Social workers are allocated to a family following the initial case conference. Once allocated to the family, the social worker is rarely changed unless she is absent from work for a long period or she leaves her role. The mother does not have a choice of which social worker she will be allocated.

4.4.1 The Setting

The relationship between the mother and the social worker exists within the private family setting. The social worker's initial assessment includes a report into the child's family and environmental factors. She is also required to regularly meet with the mother at home, to see the child within their home environment and carry out unannounced visits.⁶³ M2's social worker told me, "I meet with M2 most of the time at home, that's part of real social worker's work around child protection." However, not all of the meetings between the mother and social worker must take place in the home, and several of the social workers I spoke to told me that they also utilise children's centres for their regular meetings with mothers. Social workers may also encourage family members to attend their offices for routine meetings. Ferguson argues that meetings away from the home are vital, as the home affords

⁶³ Kent and Medway Safeguarding Children Board, above n 38 s.2.1.9 ss.4.3

opportunities for concealment of secrets. He states that “social workers recognise that office interviews potentially give them greater control over the session.”⁶⁴ M3’s social worker told me of the various places she had met with M3 and why varying the settings for their meetings was important:

“...the first meeting was at the school...I done a home visit because obviously it’s [the] natural environment to see her. She met with me at the office...it’s better than to discuss in front of the children...”

M3 interpreted meetings at her home as being “some sort of risk meetings” where she believed her home was being scrutinised. The social workers I spoke to generally felt that the meetings with the mothers at their home allowed a better level of interaction because the mothers were relaxed. M8’s social worker told me “I think that when she is at home she is more relaxed, because this is her own environment,” although she did explain that some mothers are more easily distracted when they meet at home, by having to tend to their children or answer their phones. The meetings in the homes also involved a strong observational element; for example, M7’s social worker had been required by the family court to spend eight hours observing how M7 interacted with her five-year-old son throughout the whole day.

The social workers indicated a distinct difference between the “visits”, which were conducted in the home and included observation of the mother and the child, and “meetings” which tended to be conducted away from the home, and often involved other attendees in addition to the social worker and the mother. These included multi-agency meetings such as core

⁶⁴ Ferguson, H *Child Protection Practice* (2011) p.125

groups and child protection conferences. The largest and most daunting of these meetings is the case conference. Both the initial and review case conferences are held away from the family home.⁶⁵ The conferences:

“bring together family members, with the supporters, advocates and professionals most involved with the child and family, to make decisions about the child’s future safety, health and development.”⁶⁶

The setting for this element of the child protection process is one which could be potentially intimidating to the mother: within a boardroom, with a large table and a chairperson. From the interviews, it seems that within the setting of the conference, the chairperson had the most impact on the mothers. M2 told me that conferences unnerved her because of her experience of a particular chairperson, who she said reminded her of her abusive partner:

“[ex-partner] may as well have sat down there, he seemed...that way inclined...we felt bullied, and pressured...he was pushing us to do something that we knew was going to just cause trouble.”

M4 also spoke about her experience of a chair at one of the conferences:

“There was one...that wouldn’t let me speak. She asked my opinion, and then when I started speaking she spoke over me. So, I couldn’t get anything in. I couldn’t give my opinion or anything.”

⁶⁵ *Ibid* p.17

⁶⁶ HM Government, above n 33 p.43

M4's social worker explained how she felt the initial child protection conference had affected M4, but she also spoke in general about families who were new to the child protection process:

“the [initial] conference was awful for M4...I completely understand that for any family coming into a child protection conference, I think [it] is one of the most...violating for a family...[M4] was really distressed...”

There can be many professionals involved in the conferences,⁶⁷ some of whom may not have worked directly with the mother or her family and are strangers to her. This is because, as with the MARAC meetings introduced in the previous chapter, the professionals attending the conference are required to have a decision-making capacity within their organisation.⁶⁸ Since the aim of the child protection process is to safeguard children through a multi-agency response,⁶⁹ all meetings can potentially include many professionals, presenting their reports and expert assessments of the family.

Another periodic meeting within the child protection process that the mother is expected to attend along with other professionals, is the core group meeting. M5 explained that:

“it's been a bit daunting because a lot of professionals come into the core group, and speak about you...it could be bad...but they've still got to bring it up...”

⁶⁷ Kent and Medway Safeguarding Children Board, above n 38 s.2.1.7 ss.4

⁶⁸ *ibid*

⁶⁹ HM Government, n 33 p.9

And M7 told me that when she was at core group meetings, “I never used to get a word in edgeways...[I] may as well not have been there.”

The relationship between the mother and the social worker therefore exists within both the private setting of the home and the public settings of children’s centres, social services’ office spaces and formal meeting rooms. The mother’s private family life is opened up for observation and assessment by the social worker and her colleagues. The mother is also expected to place herself within the social worker’s formal setting and is expected to account for herself and her children in front of large numbers of (often unknown) professional people.

4.4.2 Structuring Forces in the Private Family Setting

The mother and social worker may physically meet within the home, and within more formal settings, however the relationship is situated within the mother’s family. The social worker enters the family, observes, makes judgements and write reports about the family unit, and about individuals within the family unit. She then advises the mother and coordinates various other professionals to advise the mother on how best to care for her family. The next section will examine the forces which structure this relationship, situated within the private family setting.

4.4.2.1 Juridical and Biopolitical Forces

Juridical power as a force is present within the relationships between the mother and specific professionals when judicial processes form part of the relationship. As has been described, the relationship between the mother and the social worker is based upon a statutory and legislative framework. Although the mother may never find herself physically in a courtroom with her social worker, these frameworks shape the entirety of the child protection process. Each step of the process is underpinned by the Children Act, along with a plethora of case law

and regularly updated statutory guidance which is produced by both central and local government. There is a constant threat of coercive juridical power being utilised by social workers. However, within the relationship between the mother and the social worker biopower is also present. As discussed in chapter two and further explained in chapter three, within a biopolitical model, professional experts advise their clients on how they should best live their lives by illustrating to them the “norms of conduct.”⁷⁰ Individuals are “quietly coerced” by the “normalising judgements” of professional experts to act in a widely acceptable way in particular circumstances. The experts have the knowledge to guide, advise, care and support the subjects of their expertise.

Social workers are a perfect example of a professional expert within the biopolitical system, whilst the family, and specifically the mother, are the subjects of this expertise. As Nikolas Rose explains:

“It is experts who can specify ways of conducting one’s private affairs that are desirable, not because they are required by a moral code, but because they are rational and true.”⁷¹

Within the current government guidelines for safeguarding children it is highlighted that “safeguarding is everyone’s responsibility.”⁷² The explanation which follows this title within the guidance is explicitly for professionals, indicating that the “everyone” in the title refers to “every professional”. There follows a list of agencies and personnel within each agency who are responsible for safeguarding. Each of the professions listed is an “expert”, expected to be safeguarding all children from all harm. The social worker is the lead expert in these matters,

⁷⁰ Rose, N *Powers of Freedom: Reframing Political Thought* (1999) p.87

⁷¹ *ibid* p.75

⁷² HM Government, above 33 p.9

and she holds the relevant knowledge to normalise the situation with or without the cooperation of the mother. By showing the mother what normative expectations are placed upon her, the mother has the “choice” to live up to those norms. There is no need for explicit coercion on the part of the social worker. The social worker is a concerned professional, operating in a:

“Regime of the self where competent personhood is thought to depend upon the continual exercise of freedom and where one is encouraged to understand life....in terms of one’s success or failure in acquiring the skills and making the choices to actualize oneself.”⁷³

As noted in chapter two, norms of conduct of how “civilised” people would behave are demonstrated by the social worker to the “uncivilised” mother. This is apparent in the use of the threshold test for significant harm, which is reached if “the care being provided by parents [is not] what it would be reasonable to expect a parent to provide.”⁷⁴ The test is based upon the norms of conduct for a reasonable parent. Those who do not behave in line with these norms may exist on the margins of a regime of civility. This includes the abused mother who finds her options reduced to either choosing to adapt her behaviour in line with the social worker’s expert advice or choosing to resist the social worker’s expert advice. If the mother resists the advice and conducts herself in a way which is against the norm, juridical forces are employed to ensure the norms of conduct are adhered to or the children are removed from the deviant household.

⁷³ Rose, above n 70 p.87

⁷⁴ Children Act s.31(2)a

M5 told me that she had “done everything right” but that she had previously gone against the advice of her social worker:

“If I wasn’t to do as I am told, and, like, doing things like they said, like go to [drug and alcohol agency] and have visits with [social worker]...I would get into a worse situation where they would take legal action on me...they were thinking to do that on me because I wasn’t listening to them, I wasn’t doing as I was told...I got very scared and I started to change very quickly...”

M3’s social worker told me that M3 “takes on board advice” which she gives her, whilst M3 told me that her social worker was “delighted with me”. M7’s social worker very openly told me that M7 was “eager to please” her. There is a perceptible element to these relationships of the mother conducting herself in line with the social worker’s norms of conduct. The term “disguised compliance” was used by social workers in their interviews and recorded in their case-notes. This term has been in use for over twenty years,⁷⁵ however its use has recently become more widespread and can now be found on the NSPCC website where it is used to describe parents who give the impression of cooperating with child welfare professionals in order to avoid suspicion and reduce statutory intervention with their family.⁷⁶ Paul Hart argues that this term is grammatically incorrect and instead of describing a person who is pretending to be compliant, the term actually describes someone who is pretending not to be compliant.⁷⁷ “Symptoms” of disguised compliance include tidying the house for pre-

⁷⁵ Reder, P *Beyond Blame: Child Abuse Tragedies Revisited* (1993)

⁷⁶ www.nspcc.org.uk/prevent.abuse/child-protection-system/case-reviews/learning/disguised-compliance/ Accessed 25th June 2018

⁷⁷ Hart, P “Disguised Compliance – or Undisguised Nonsense?” *Family Law Week* (10th April 2017) Available <<http://www.familylawweek.co.uk/site.aspx?i=ed177164>> Accessed 25th June 2018

arranged visits, which leaves the mother in a no-win situation as presumably she would also be negatively judged if she did not tidy the house in preparation for a visit. Other “symptoms” include promising to take up services but then not taking them up and avoiding contact with professionals; these behaviours appear to be overtly non-compliant, rather than “disguised (non-)compliance.” Whilst some parents may fail to engage with social workers because they have something to hide, the availability of a label such as this encourages social workers to categorise mothers who may be struggling to make changes for other reasons.

If the mother does not adhere to the norms of conduct set out by the expert social workers, the power of the law may be utilised:

“a rebellious family that refuses to work with the professionals or attempts to ignore their views will find that it cannot safely do so: it will be subjected to coercive measures.”⁷⁸

Social workers are encouraged to work in partnership with each family based on “openness, mutual trust, joint decision making and willingness to listen.”⁷⁹ However as Kaganas argues, it is the professional parties who decide on the extent of the partnership and are free to ignore the feelings of their non-professional “partners”.⁸⁰ Whilst it is recognised that advice and advocacy from the social worker can be a positive experience for the family,⁸¹ mothers are often talked into “coming around” to the social worker’s point of view.⁸² For example, M3 had planned to allow her ex-partner contact with their children at his parents’ house upon his

⁷⁸ Kaganas, F “Partnership Under the Children Act 1989 – An Overview” in F Kaganas, M King and C Piper (eds), *Legislating for Harmony: Partnership under the Children Act 1989* (1995) p.11

⁷⁹ Department of Health *The Challenge of Partnership in Child Protection: Practice Guide* (1995) Para:2.13

⁸⁰ Kaganas, above n 78

⁸¹ Lindley, B and Richards, M “Working Together 2000 – How Will Parents Fare Under the New Child Protection Process?” *Child and Family Law Quarterly* 12 (2000) p.225

⁸² Lindley, B, Richards, M and Freeman P “Advice and Advocacy for Parents in Child Protection Cases – What is Happening in Current Practice?” *Child and Family Law Quarterly* 12 (2001) p.182

release from prison. The social worker told me in our interview that she had not agreed with this and wanted the contact to be in a supervised environment. M3 explained to the social worker that her ex-partner would not agree with seeing his children in this environment. At the same time, the social worker had also made it clear that she wanted the children to see their father as part of the child protection plan, which she described as being “best for the children, in their best interests.” The social worker explained that M3 was persuaded to follow her advice and arrange contact through a contact centre. However, the ex-partner refused to see the children in a supervised setting, as M3 said he would, and the children did not see their father. M3 had come around to the social worker’s point of view, but this led to the children not seeing their father, which the social worker had deemed to be in the children’s best interest.

There is a conflict between the ideology of partnership which is implied in the Children Act and the position of the “expert” social worker in the “partnership.” Not only is the social worker an “expert”, but she also has the coercive powers of the Children Act on her side of the “partnership”. For example, the “letter before proceedings” issued to parents by social workers who intend to apply for a care order focuses on avoiding court proceedings by asking the parents to agree with the social worker on certain matters.⁸³ If parents have the choice to either work with the social worker voluntarily or be subjected to a court order, the opportunity for any “choice” is a myth for them.

“So far as the relationship of social workers with parents is concerned,
the Children Act envisages two types of partnership; the voluntary

⁸³ Kaganas F, “Child Protection, Gender and Rights” in Wallbank, J, Choudhry, S and Herring, J (eds) *Rights, Gender and Family Law* (2010) p.60

partnership which deals with situations where there is no court order in relation to the child and legal control remains in the hands of the parent, and the non-voluntary partnership where a court has made an order and varying degrees of control pass to the LA.”⁸⁴

As suggested in chapter two, the use of biopower within the child protection system extends the “influence” of the law by giving it credibility.⁸⁵ The Children Act aims to reduce the coercive elements of the law whilst encouraging families to work with the experts to “bring up happier, healthier children.”⁸⁶ However the very nature of a professional expert within the family setting, purporting to possess “the power of truth”⁸⁷ about that family, unevenly balances power in favour of the expert. Whilst the Children Act continues to make provision for coercive measures such as the interim care order,⁸⁸ where the local authority retains a greater proportion of parental responsibility for the child despite the child still living with the parent. The social worker’s dual role of guidance and enforcement, both underpinned by the Children Act, unbalances the mother’s relationship with the social worker. The mother is expected to trust in the social worker as someone who is supportive and knowledgeable, whilst being constantly aware that this is a professional who is able to remove her children by utilising the law.

⁸⁴ Woodhouse, S “Child Protection and Working in Partnership with Parents” in Kaganas, F, King, M and Piper, C *Legislating for Harmony: Partnership under the Children Act 1989* (1995) pp.134-135

⁸⁵ Smart, C *Feminism and the Power of the Law* (1989) p.8

⁸⁶ Rose, N and Miller, N “Political Power Beyond the State” in Golder, B and Fitzpatrick, P *Foucault and the Law* (2010) p.286

⁸⁷ *ibid*

⁸⁸ Children Act s.38

4.4.2.2 Gendered Forces

Gendered forces are nested in the relationship between the mother and the social worker which construct the mother as the caring and nurturing parent within the family unit. This pervasive view of motherhood feeds from society into professional practice and so it falls to the mother to adhere to the expert social worker's norms of being a "good mother". The mothers also assigned a value to themselves based on their mothering abilities. For example, M3 told me she felt "mortified" when her parenting was being questioned by social workers, and that she felt that she was on trial "as a mother". Elizabeth Schneider describes society's view of mothers when they have also been victims of domestic violence. She explains that mother-love is viewed as sacred and mothers are people who would and should sacrifice anything for their children,⁸⁹ therefore if a mother is seen to be placing her own needs ahead of her child's she will be reviled by society.⁹⁰ By "choosing" to stay in a violent relationship the mother is judged to be failing to protect her children from witnessing the abuse.

"Male violence in the family even when it is extreme and lethal, seems like a natural extension of male patriarchal authority in general; women's failure to mother makes them monsters."⁹¹

It is this ideological view of the mother that feeds into the attitudes of social workers, where mothers are blamed "for the dilemma of being caught between partners and children."⁹² Mothers are in turn expected to "engage" and work with the social worker to protect their

⁸⁹ Schneider, E *Battered Women and Feminist Law-making* (2000) p.150

⁹⁰ *ibid* p.148

⁹¹ *ibid* p.154

⁹² *ibid* p.156

children, thus normalising their life in line with the expectations of the expert.⁹³ As Kaganas points out:

“Clearly, the risks inherent in being assessed and monitored, and the responsibility of behaving in a way that withstands scrutiny, do not rest on both parents equally. Nor do the burdens of co-operating with the professionals.”⁹⁴

An example of this are the letters received by M2 following reports of violence perpetrated upon her by her husband. The first of these letters was addressed to both M2 and her husband advising them that if police were called again social services would consider taking action in order to safeguard their child. However, the second letter was addressed only to M2, the victim of the abuse, advising M2 that it was *her* duty to ensure her child does not witness domestic abuse. M2 said of receiving this letter, “Christ, social services were involved...I didn’t like it, it made me feel ashamed. Social services were questioning me as a parent.”

Social workers expect to deal predominantly with mothers during the child protection process,⁹⁵ and indeed during the process mothers are expected to “cope despite extremely trying circumstances.”⁹⁶ They are expected to protect the children even if the family’s difficulties are caused by other people.⁹⁷ A failure to measure up to this expectation can easily be construed as “pathological”,⁹⁸ potentially leading to the removal of the children from the

⁹³ Clarke, K “Childhood, Parenting and Early Intervention: A Critical Examination of the Sure Start National Programme” *Critical Social Policy* 26 (2006) p.711

⁹⁴ Kaganas, above n 83 p.66

⁹⁵ Ferguson, H *Protecting Children in Time* (2004) p.3

⁹⁶ Krane, J and Davies, L “Mothering and Child Protection Practice: Rethinking Risk Assessment” *Child and Family Social Work* 5 (2000) p.42

⁹⁷ Scourfield, J “Constructing Women in Child Protection Work” *Child and Family Social Work* 6 (2001) p.82

⁹⁸ Clarke, above n 93 p.701

mother's care.⁹⁹ On the other hand social workers are recognised as not engaging with fathers, even when it is the father who is the abuser.¹⁰⁰ A study by Stanley et al. examines DHRs to identify the effects on children situated within a family where a domestic homicide has occurred. In this study it was found that fathers were largely "invisible" to professionals and this led to the victim being required to take responsibility for the child's safety.¹⁰¹

The following comments were written by a social worker on M2's initial conference report:

"[M2's husband] is a good father and provider for the family and always works hard to ensure they have a nice comfortable home.....however [M2] does not appear to understand that witnessing domestic abuse...is impacting on [her daughter's] emotional wellbeing."

This quote indicates that, at least for this social worker, the husband disappears as a perpetrator of abuse in favour of his role as the family's breadwinner, and M2 disappears as a victim of abuse in favour of her role as the family's primary carer. As a result of this, the husband is praised and M2 blamed in relation to their care for the child.

In summary, gender is present as a force within the setting in the form of heavy expectations on the mother to end the abuse she is subjected to, along with the juridical power of the Children Act, and the biopolitical force which the social worker's expertise produces. These forces structure the relationship between the mother and the social worker in a way which unbalances the power in favour of the social worker to the detriment of the mother. I will

⁹⁹ Scourfield, above n 97 p.78

¹⁰⁰ Daniel, B and Taylor, J *Engaging with Fathers. Practise Issues for Health and Social Care* (2001) pp.23-24

¹⁰¹ Stanley, N, Chantler, K and Robbins, R "Children and Domestic Homicide" *The British Journal of Social Work* (2018) pp.1-18

now examine the practices within this setting in order to discuss whether it is possible to mitigate these forces in order to enable this relationship to foster the mother's autonomy.

4.4.3 Practices within the Setting

Social workers in the United Kingdom are regulated by various codes of practice,¹⁰² of which The Professional Capabilities Framework (PCF)¹⁰³ is the most commonly used. The PCF covers nine "domains" of professional practice.¹⁰⁴ This was introduced in 2012 to allow an overarching and streamlined progression for social workers, from students through to senior practitioners and professional social work educators. The domains set out the expected practices for each stage of the career progression. I will be referencing three of the domains in the following section, as these particularly correlate with the mothers' experiences. The mothers spoke candidly about their relationships with their social workers and their experiences of the social workers' practices covered the three main themes of choice, knowledge and consistency which will be discussed in the following section. For added context and clarification, I also refer to the social workers' casefiles and interviews.

4.4.3.1 Choice

The juridical power which is present in the relationship reduces the mother's choices, from the moment a social worker is "allocated" to her family. Within the domain of Rights, Justice and Economic Wellbeing¹⁰⁵ social workers are expected to "understand the effects of

¹⁰² These include British Association of Social Workers: Code of ethics (2012), The College of Social Work: Code of Ethics (2012), Health and Care Professions Council: Standards of Proficiency (2012). Additionally, The Scottish Social Services Council and The Care Council for Wales also have codes of practice.

¹⁰³ The College of Social Work (2012)

¹⁰⁴ Following a consultation during 2017, the PCF was relaunched in February 2018 with slightly different descriptors. The version which is relevant to this discussion is the version which was in place during the mothers' involvement with the child protection process. The new version is available at <<https://www.basw.co.uk/resources/professional-capabilities-framework-social-work-england>> Accessed 13th June 2018

¹⁰⁵ Available < <https://www.basw.co.uk/resources/professional-capabilities-framework-social-work-england>> Accessed 16th June 2018

oppression, discrimination and poverty” and “challenge inequality and injustice, and promote strengths, agency, hope and self-determination.” As previously discussed, within an abusive relationship there is an uneven balance of power in favour of the abuser which results in the control of the abused partner. Victims of domestic abuse are oppressed within their relationship by way of coercive control, which erodes the choices available to them. Social workers’ expected practice is to recognise this oppressive environment and assist to equalise the power imbalance for the mother; however, as Davies and Krane observe:

“Child protection intervention...is driven by the scrutiny and evaluation of women as mothers...mother-blame is endemic in this...the protection of children from various forms of maltreatment more often falls on the shoulders of mothers.”¹⁰⁶

Abused mothers are not recognised by social workers as victims in need of support, and instead are expected to move on from their “oppression” in the name of protecting their children from the same abuser who has subjected them to this coercive control. Instead of working with the mother to minimise the effect of the abuse on the child, “a culture of fear permeates child protection practice.”¹⁰⁷ This is the fear the social worker feels in respect of making the “correct” decisions about the child, and also the fear the mother feels about having the social worker involved with her family. Mothers feel powerless and resistant to the social worker’s involvement and many decisions about children’s futures are made by social workers based upon the level of the mother’s compliance.¹⁰⁸ This adds a further coercive element for the mother who may keep the ongoing abuse a secret, severing the

¹⁰⁶ Davies, L and Krane, J “Collaborate with Caution: Protecting Children, Helping Mothers” in *Critical Social Policy* 26 (2006) p.414

¹⁰⁷ *ibid* p.415

¹⁰⁸ *ibid*

potential opportunity for support from the social worker, through fear of her children being removed from her care unless she leaves the relationship.¹⁰⁹ The mother does not have a full range of options available to her due to the coercive control of the abuser.¹¹⁰ This abuse is cyclical, and there is a risk that the social worker's inability to recognise and act upon the oppression she faces will feed into this cycle of abuse.

The abused mothers in my study typically became involved with the child protection process following police involvement. None of the mothers referred themselves to social services, therefore from the very beginning of the relationship the mothers experienced a lack of choice. M2 had several police call outs to her home due to "violent episodes" perpetrated by her husband. The violence escalated and during an incident their child called the police and informed them that she had been physically harmed by her father. This incident led to an emergency strategic meeting being held, followed by an initial child protection conference where a child protection plan was created for M2's child. Social services had visited M3 on a few occasions in the past, following police call outs, but this was the first time that they had found the children to be at risk of significant harm. M4 explained that her daughter had become a "child in need" when she was three or four months old and following her ex-partner becoming increasingly abusive a child protection plan was put into place. M5 had been involved with social services as a care leaver herself; she became a mother whilst she was in the care of social services and therefore her son was monitored by social services from birth. Then due to abuse from her ex-partner, the police became involved and her son was made the subject of a child protection plan.

¹⁰⁹ Hester, M, Pearson, C and Harwin, N *Making an Impact: Children and Domestic Violence* (2000)

¹¹⁰ Sullivan, C, Basta, J, Tan, C and Davidson, W "After a Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter" *Violence and Victims* 7 (3) (1992) pp.267-275

M7's relationship with her social worker differed from those above because at the time of the interview her son lived with his father, who was her ex-partner and who historically subjected her to violent and controlling behaviour. She explained to me that her involvement with social services began after she had separated from her son's father, and her new partner had become violent. The situation was very complex with her son's father obtaining a residence order amid allegations, which were later found to be false, regarding her treatment of their son. As will be discussed in chapter six, the relationship continued to be fraught with allegations and counter allegations. The child protection plan had continued due to the social worker's concerns about the effects that their post-separation relationship was having on the child. M8 was involved with social services following a non-accidental injury to her baby, which was subsequently found to have been caused by the child's father, who was her partner at the time. Both M8 and her ex-partner were arrested for causing the injury. The baby and her two other children were placed in the care of grandparents following the incident. However, at the time of my interview with M8, her children had been returned to her care and were the subject of a child in need plan. M9's involvement with social services had spanned over three years and had begun following a report to police by the school of an assault on her older child by her new partner. This was in the form of a chastisement which left a mark and the school reported this as they have a duty to safeguard the children in their care. However, the enduring issue was an ongoing and protracted family court process, which was predominantly instigated and exacerbated by M9's ex-partner who was the father of her eldest child. M9's social worker told me that the child protection plan was continuing due to her concerns that the ongoing litigation was negatively affecting the child.

The mothers' relationships with the social workers were not entered into out of choice. Once in the relationship, the mothers had little choice but to follow the child protection plan through fear of having their children removed. M2's social worker appeared to have a good insight into the level of expectation placed on mothers:

"we often hear social workers say, 'mum needs to make the right choice'. But when you're living with this situation...day after day, this assumes that person can make a choice. Their capacity for choice has gone...it's a case of living with it...in my experience of working with mums, it's just complete exhaustion."

M4 told me that when she found out at the initial child protection conference that a child protection plan was going to be created, she felt "upset...at the time, you know, when you hear social services, and stuff like that, you think your kid's going to be taken away...." M3 explained that during her early involvement with social services she had felt:

"intimidated and scared, I was going to lose my children...[that] they're going to walk out with them. That's how bad I thought it was at the beginning, that was my impression of social services."

She described one conversation which had "stuck in [her] head" when a social worker had told her "if you get back with him, you put your child at risk, and you risk them being taken away." She told me that the fear this statement instilled in her meant she did not call the police on various occasions when her ex-partner had been violent. This limited her option of accessing the protection of the police.

There was evidence in the social workers' casefiles that the mothers were required to follow action plans which they had little involvement in creating. For example, both M4 and M5 were "encouraged" to apply for non-molestation orders as a requirement of their child protection plans. This was despite their reluctance to do so. M4 told me that her social worker advised her not to return to her own home but to stay at her parents' house for protection, and if she did not follow this advice she believed that the social worker "[would] probably take me to court". She explained that she did not feel like her social worker gave her choices and that she was expected to follow all of their advice. M8 gave me an example of when she had not wanted her baby daughter to go for overnight contact with paternal grandparents:

"she was vomiting, she had a temperature...I said I'm not happy about handing [daughter] over this weekend, but I'll give them extra contact another weekend... [The social worker] doesn't give me choice over my own child. She tells me I have to [allow contact] ...otherwise she won't close the case. If I don't hand her over she won't close my social services case..."

The mothers were generally aware of the power imbalance and their resulting lack of autonomy within the relationship with their social workers. However, contrary to the other mothers' perception about their status in the relationship, M3 perceived that she had an element of control over her relationship with her social worker, "because I'm not stupid, they trust me to know what I'm doing...my health visitor thinks I'm marvellous...I'm not a concern in any way and they're happy." Her social worker also perceived that she had an "equal" relationship with M3. When asked to elaborate on this, she told me:

“when I do visits she always makes sure she is done doing the dinner or given snacks so when you get to the house she’s got your full attention, she’s not running around, doing things....”

Both M3 and her social worker’s explanation of the relationship indicates a keenness on M3’s part to please the social worker. The social worker is impressed with M3 because she stops her normal routine to make time and space for the social worker. M3 is proud of herself for being seen as a good parent. This does not indicate an equal relationship, but one where the social worker wields the power of the expert, whom the mother aims to impress. At the same time the social worker has the underlying juridical power of removing M3’s children if she is not impressed by M3’s response to her involvement with the family. M3 also told me that “with the social worker you put on a front because you’re scared your children are going to be taken away.” This does not indicate that the relationship was an equal one, despite the social worker, and outwardly the mother, believing that it was.

M4 explained that “I’m told a list of things to do, but the social workers don’t do their list of things to do...” When we talked about this further she described her social worker as not always being available and visiting her within the expected timescales. M4 perceived that she “was doing everything, but [the social worker] weren’t doing what she should be doing.” This indicates that M4 expected her relationship with her social worker to be equal, with both of them having a part to play within the relationship. M4 did not feel that the social worker was complying with her side of the plan and therefore felt aggrieved that she had no choice but to comply with the plan. M4 also felt happier when the social worker was pleased with her. She told me that the child protection review conference, “was alright because I was doing everything I was supposed to, and they praised me about everything.” The social worker

within this relationship is recognised by M4 as the expert, with the underlying coercive power of the courts which M4 fears. She therefore behaves in a way which she hopes will please the social worker, despite her feeling that the social worker falls short of how M4 expects her to behave.

M5 told me that her son was the subject of a child protection plan following a “big conference” which made her feel:

“very emotional, very upset about things that were happening in my life, and I was scared I was going to lose my son to social services, so I was very, very emotional.”

She told me that at first “I wasn’t a fan...I didn’t like social services, I thought they were going against me.” M5’s social work assistant¹¹¹ explained that when she first meets with mothers, she informs them that “I can’t remove your children, I’ve got no powers,” as an aside to which she added that, “I gather the evidence to remove their children.” She described some of the mothers as the “nervous ones...they’re scared that we’re going to take the kids away...”and she told me that some of the mothers she works with are “fidgety” and ask her “oh, have we done this ok? Is this ok? Have we done enough?” During her interview, the social work assistant was made aware that M5 had allowed her ex-partner to stay at her house. This was against the social worker’s recommendations. She could not understand why M5 had made this choice. She was visibly frustrated and told me, “I just think she is a liar...I had this discussion with her yesterday, so she’s blatantly lied to me.” She explained that M5 had been,

¹¹¹ Social work assistants do not have a professional qualification. They are assigned to families who need more intensive family support, for example assisting with establishing child-care routines and attending appointments. Their function is to reduce the workload of social workers. M5 had a social worker but also had a social work assistant to help her with her son due to her young age when she became a mother. The social work assistant was the professional who agreed to be involved with the study in the place of the social worker.

“doing so well, we’re having a meeting in two weeks to discuss closing the case, and she’s done this.” It is apparent from M5’s fear of social workers removing her child and the upset her social work assistant felt because M5 had not followed her advice, that this is not an equal relationship which fosters M5’s autonomy. This is a relationship which is structured by the social work assistant’s expertise and biopolitical power, which is underscored by M5’s fear of her son being removed from her care.

There was a perception amongst the mothers that they were passive within the relationships with the social workers. The lack of choices, and the coercive nature of her involvement with the child protection plan was exacerbated by M9’s social worker’s poor communication. M9 told me that she had asked her social worker about a time scale for her son’s child protection plan to conclude and the social worker had refused to answer this question. M9 told me that she found “it really difficult to pin [social worker] down to an answer.” M9 felt that she had nothing to aim for, there were no goals set for her to achieve in order for her child to no longer be part of a child protection plan. This did not foster in M9 the ability to look at her options and decide how she wanted to progress. In fact, M9 told me that her social worker did not give her choices. She said of her social worker, “I don’t feel she helps or advises me on how to deal with anything”. She told me that on a couple of occasions she had been struggling and had asked directly for assistance, but this had led to the social worker “coming down on me like a ton of bricks.” M9 vehemently assured me:

“you can’t win one way or the other. I’m now of the opinion to just keep your mouth shut and smile. You don’t get anywhere otherwise. She won’t listen to anything I have got to say.”

There is a distinct lack of partnership working within this relationship. M9 does not appear to be able to do anything which can make a difference to her own situation; she is effectively a passive recipient of social services' interventions. This relationship does not promote M9's autonomy. She does not feel like an active part of the process, and furthermore she perceives that however she acts it will not make any difference to her child being part of a child protection plan.

The mothers' relationships with their social workers are built upon statutory requirements. The relationships do not require consent on the part of the mother, and throughout the relationship the mothers are not required to agree with the social worker's views, they must simply follow them in order to appease the social worker and aim for the relationship to end. The practices of the social workers in this study appear to exacerbate the structuring forces of juridical power and biopower.

4.4.3.2 Knowledge

Within the domain of "Diversity" social workers are expected to

"appreciate that, as a consequence of difference, a person's life experience may include oppression, marginalisation and alienation as well as privilege, power and acclaim, and are able to challenge appropriately."¹¹²

Social workers are expected to understand what motivates different people and also how early years experiences will subconsciously shape a person's life choices. An example of this is that women whose early years have been spent within an abusive home setting may

¹¹² British Association of Social Workers (BASW) *Domains Within PCF* (2012) p.1

understand this abuse as the norm and are therefore more likely to find themselves within an abusive adult relationship.¹¹³ This normalisation of domestic abuse is part of the reason why “allowing” a child to witness abuse is recognised as emotional abuse of that child.¹¹⁴ However as Farmer has observed, social services departments do not have specific domestic abuse policies, an observation which was reflected in the findings of my study. When asked about domestic abuse training most of the social workers told me that they had attended a short domestic abuse training course, or they had learnt about domestic abuse during a module at university. There did not appear to be an opportunity for ongoing training, despite the high numbers of child protection cases which involve domestic abuse at some level. A lack of working knowledge around the pervasive and complex nature of domestic abuse results in a lack of understanding of the mothers’ experiences. There is a conflict between social workers’ recognition of domestic abuse being unhealthy for a child to witness, because it may normalise abuse for them in later life and lead to them “choosing” an abusive relationship, and social workers’ ability to understand that this early life experience could be a reason why the abused mother may be in situation she is currently in.

Another risk of social workers having a poor understanding of domestic abuse is the resulting inability to recognise that the abuse they are tasked with protecting the child from, is intrinsically linked to the abuse the mother is being subjected to. This leads to them responding differently to violence towards the child and violence towards the mother, often missing the connection between the two.¹¹⁵ Social workers do not respond to the mother and

¹¹³ Wolfe, D, Criks, C, Lee, V, McIntyre-Smith A and Jaffe, P G “The Effects of Children's Exposure to Domestic Violence: A Meta-Analysis and Critique” *Clinical Child and Family Psychology Review* 6 (3) (2003) pp.171-187

¹¹⁴ Holt, S, Buckley, H and Whelan, S “The Impact of Exposure to Domestic Violence on Children and Young People: A Review of Literature” *Child Abuse and Neglect* 32 (8) (2008) pp.797-810

¹¹⁵ Farmer, E “Using Research to Develop Practice in Child Protection and Child Care” in Humphreys, C and Stanley, N *Domestic Violence and Child Protection, Directions for Good Practice* (2006) p.126

child as a unit, despite the fact that the child's experience is a consequence of the mother being coercively controlled by the abuser.¹¹⁶ As Sharp-Jeffs and Kelly argue, "holding both women and children, and their relationship, in view is a challenge" for safeguarding professionals.¹¹⁷ Stark has argued that professionals failing to properly recognise the mother as being coercively controlled by their abusive partners reinforces what he terms the "battered mother's dilemma."¹¹⁸ This leads to the mother also being coercively controlled by social workers because they deem the mother to be failing to protect their child from the abuser's behaviour.

Social workers who fail to understand the complexities of domestic abuse are unable to appreciate the "consequences of difference" that the mothers are faced with in their lives. The only social worker who displayed a good understanding of the complexities of domestic abuse was M2's social worker. When I asked the social workers why they thought domestic abuse happened and what they thought was the best way to protect children from the harm of domestic abuse, the majority of their responses focused on the victim of the abuse. M3's social worker told me that domestic abuse happens because "women are so vulnerable". M5's social worker told me that to end domestic abuse, we should "educate the parents, well the mums," whilst M7's social worker told me that mothers need:

"to take up the support available for her, because if she is behaving as a victim, being unhappy, [the children] will not be happy as well... We

¹¹⁶ Buzawa, E, Buzawa, C and Stark, E *Responding to Domestic Violence: The Integration of Criminal Justice and Human Services* (2015) p.400

¹¹⁷ Sharp-Jeffs, Nicola and Kelly, Liz *Domestic Homicide Review (DHR) Case Analysis: Report for Standing Together* (2016) p.72

¹¹⁸ Stark, E *Keynote Speech: Rutgers University* (2012)

need to be...working with the victim, the mother, to be more strong
in herself, to be more strong for herself and her kids as well.”

M8’s social worker told me that in order to stop domestic abuse women needed to be
empowered, to:

“do things for themselves...because most of the women we come
across are the ones who haven’t done well in education...the young
and vulnerable, so it’s just a matter of empowering these women in
our society.”

M9’s social worker also felt that domestic abuse happens because of “confidence issues, self-
esteem, for whoever that victim is.... it’s about people being vulnerable, at different stages of
their life...”

When the social workers did speak about the abusers, they appeared to understand them as
broken and in need of help. M7’s social worker told me that

“people being violent or abusive or controlling, is a way of expressing
their own unsolved emotionally, mentally, problems...It’s like
survival...they need help, like an alcoholic, you know? From the
outside, it’s a bad person, he’s violent, he’s spending all the money,
not taking responsibility...but he’s ill.”

M5’s social work assistant’s incredulous disbelief at M5 allowing her ex-partner back into the
home indicates a lack of knowledge about the ongoing controlling nature of domestic abuse
perpetrators following separation. This lack of understanding of domestic abuse as a
cumulative and enduring issue within families was common amongst the social workers I

spoke to. Although the majority of them were able to tell me that domestic abuse was about power and control, they seemed to believe that these ingrained power dynamics could shift or altogether disappear. For example, M8's social worker told me that:

“there's a victim and a perpetrator, and sometimes both of them can be in reverse, because one time they can be a victim and next time they can be a perpetrator.”

This indicates a concerning lack of knowledge about the nature of domestic abuse, how the control of the abuser is pervasive, encompasses all parts of the family's day to day lives and structures all of the mother's other relationships.

The majority of the social workers did not perceive that domestic abuse had been the substantive issue which had resulted in them being involved with the mothers. M5's social work assistant began her interview by telling me that she did not believe this case to have been about domestic abuse. She explained that social services were involved with the family because of M5's child's “routines and behaviour”. She told me “there was no domestic violence, that I was aware of.” However, later in the interview she said:

“there had been [domestic abuse] in the past because [child] was on a child protection plan, but when I was working with them they were fine.”

When I spoke to M7's social worker, she was very clear from the start and throughout the interview that M7's child was not the subject of a child protection plan because of domestic abuse. She told me that:

“the concern was in relation to [M7’s] mental health and the tense conflictive relationship between M7 and [ex-partner] with the impact on [child’s] emotional wellbeing... Also, there were quite high levels of concerns in relation to some alleged fabricated illness by M7....it was nothing in relation to domestic violence.”

She went on to describe meetings where M7 did not speak up for herself as she seemed to be intimidated by her ex-partner, telling me that when the ex-partner was present, “definitely [M7] was not comfortable with this.” She also told me that M7:

“claimed all the time, that she has been a victim of domestic violence, when she was in a relationship with [ex-partner]. But however, there is no evidence to sustain this. She doesn’t call the police, or there is no police attending, there is no medical attention in relation to any injuries.”

This lack of belief of M7 in light of “no evidence” is interesting as from the advocate’s case notes examined in the previous chapter, M7 had been supported by the advocacy service throughout the relationship with this ex-partner. If the social worker had undertaken the agency checks, as is required within the child protection process, she would have been made aware of the abuse M7 was subjected to during her relationship. The lack of belief in M7’s experiences, along with a lack of understanding of how coercive and controlling behaviour continues following separation, did not allow the social worker to offer M7 any real support. The social worker also told me that M7 had been diagnosed with post-traumatic stress disorder but that the psychologist “has the information provided by M7 only.” She was sceptical about this diagnosis, which the psychologist had reported had been caused by

domestic abuse. She used the fact that M7 was attempting to maintain good communication with her ex-partner as proof that there had not been any domestic abuse in their relationship. Yet this communication was necessary to facilitate the court ordered shared parenting of the child. She told me that she did not believe that someone who was a victim of domestic abuse would wish to communicate with their abuser. She told me “it was her account against his, because he denied all the time, the domestic abuse.” She appeared to sympathise with the ex-partner, stating that:

“[the ex-partner] asked her ‘if I raped you and if I beaten you up and if I was so horrible to you, why, you were still ringing me, why would you like to have any kind of communication with me’ and this is what I don’t understand either...”

When the social worker put this question to M7, she replied, “I would like to have a normal conversation and relationship with [ex-partner] as parents.” The social worker did not accept this account, instead seemingly preferring the ex-partner’s understanding of the situation, telling me:

“this is not something for victim of DV, sexual abuse... [Ex-partner] was rhetorically asking me, ‘if I did this to her then *why* did she do this and this and that?’.”

This social worker was not equipped to understand and empathise with M7 because she did not understand the complexities of the abuse which M7 was still being subjected to, whilst the ex-partner had their child living with him and M7 was reliant on him to allow contact with their child. Furthermore, the social worker appears oblivious to the tactics deployed by

abusive men, of deflecting blame and denying any wrongdoing. The irony of this situation is that in terms of the family law perspective, the mother would be praised for the continued contact with her ex-partner. This will be discussed in detail in chapter six.

M8's social worker was also adamant that there was no domestic abuse within the relationship and said that M8 had brought this up during the child protection process with little evidence. She told me "the issues were not around domestic violence." However, during the interview she went on to tell me that M8 had been in a refuge previously, and that there has been "some historical background around domestic abuse." As with M7's social worker, it appears that this social worker did not understand the cumulative nature of being subjected to domestic abuse and assumed that once the incidents had stopped, any effects on the victim also stopped. She told me that:

"there's a tendency that most women who are victims of domestic violence, despite saying they are victims, they need, you know to be free from that relationship, you find that they keep on going back to the same person..."

Conflictingly, the social worker claimed that the issues the mother was now facing were not related to the domestic abuse she suffered; yet at the same time she indicated during her interview that social services were staying involved with the family, despite M8 separating from her abuser, as there was a risk that she would return to the relationship. At times during the interview, the social worker appeared to be both disbelieving of M8's account of the abuse, whilst indicating that if abuse did happen M8 was culpable, saying:

“let’s hope she has insight into issues of domestic violence, so she doesn’t go into another relationship which exposes children to further incidents of domestic violence.”

Despite social services being involved with this family because the small baby had been seriously injured by the father, this statement firmly pins the blame for the children being victims of the violence onto M8. The father had admitted this crime, yet later in the interview the social worker went on to say that she sometimes questions:

“who’s the victim here, of domestic abuse, because she comes across as more vocal...she’s the one who is more talkative than the men...not only me, but other professionals, asking whether she was really a victim of domestic violence, or was it two-way?”

This lack of awareness of the complexities and nuances of domestic abuse by the social workers does not promote the mothers’ autonomy. As the principal figure within the child protection process, whose role it is to liaise with and coordinate the multi-agency professionals, it should be imperative that the social worker has a clear and multi-faceted understanding of what is a complicated issue, with cumulative effects on victims. The social workers cannot empathise with the mother’s situation and support her to make life choices if they do not understand the complexities of what the mother has experienced.

I also asked the social workers how they felt about continued contact between the children and the abusive father following separation. M3’s social worker appeared to encourage contact, even praising M3 because:

“she allowed the children to have contact with dad as much as possible... That to me, she wasn’t putting her own feeling towards her partner onto the children, she thought what was best for the children, in their best interests.”

This included taking the six-year-old to a prison visit with the father who was on remand for a sexual offence against M3, which had happened while the child was in the house. This illustrates the expectation for M3 to separate from her abusive partner, to ensure the child is no longer exposed to domestic abuse, yet to facilitate contact between the child and the abusive father. As well as a poor understanding of the dynamics of domestic abuse, this social worker seemed to also have a poor understanding of the effects of abuse on the child, instead choosing to follow the mantra that it is nearly always in the child’s best interest to have contact with their father.¹¹⁹

The social workers’ lack of understanding of domestic abuse undermines the mothers’ experiences of the abuse and makes it fairly difficult for the social worker to provide the support which the mother, as a victim of domestic abuse, needs. The mother’s autonomy is negated by the lack of understanding, as the social worker is unable to respond to the mother as an individual, with a raft of lived experiences.

¹¹⁹ See chapter six for an in-depth discussion regarding this presumption

4.4.3.3 Consistency

Within the “Intervention and Skills” domain, social workers are expected to:

“engage with individuals, families, groups and communities...and enable effective relationships...understand and take account of differentials of power and are able to use authority appropriately.”¹²⁰

Social workers are expected to engage with the whole family to enable effective relationships, yet it is well documented that they fail to engage fathers, and specifically abusive fathers, within the child protection process.¹²¹ Scourfield has written extensively about this issue, criticising established social work practices whereby child protection staff spend most of their time working with mothers, whilst the men involved in the child’s life tend not to be engaged.¹²² These practices have been critiqued from two opposing viewpoints: the feminist argument that most maltreatment of children within families is the fault of the man and it is therefore unjust to make mothers the focus of professionals’ scrutiny;¹²³ and the “men’s rights” argument that fathers are denied meaningful involvement in major decisions about their children and are not involved in the statutory process.¹²⁴ It would appear from these arguments that both feminists and “men’s rights” activists want more contact between social work professionals and men. The expected practice is that all members of the family be equally engaged with the process, yet this does not appear to be the standard practice of social workers.

¹²⁰ BASW, above n 111 p.2

¹²¹ Goff, S “The Participation of Fathers in Child Protection Conferences: A Practitioners Perspective” *Child Abuse Review* 21 (2012) p.275

¹²² Scourfield, J “The Challenge of Engaging Fathers in the Child Protection Process” *Critical Social Policy* 26 (2) (2006) p.440

¹²³ *ibid* p.441

¹²⁴ *ibid*

In social work practice it is also recognised that within the relationship between the social worker, the mother and an abusive partner the social worker may adopt the fear that the mother feels for the abuser.¹²⁵ Jan Pahl has observed that interpersonal violence can be as present in social work practice as it is within an abusive relationship.¹²⁶ This fear of violence will make good quality partnership working between the social worker and the abuser impossible, and in turn will affect the decision making process. If social workers are expected to engage with the whole family, in order to enable effective relationships, they cannot do so whilst continuing to exclude and avoid abusive fathers and father-figures from the child protection process. The mothers in my study experienced this disproportionate expectation placed on them compared with the social workers' lack of engagement with fathers. The expectation upon mothers is to engage with services, to change their lives, to learn new skills or even to end the abuse they are being subjected to. This is in stark contrast to the overwhelming lack of engagement of fathers within the process. This lack of engagement obviously leads to a lack of expectation placed on the fathers, who are the perpetrators of the abuse. M5's social work assistant told me quite clearly that: "I haven't worked with much domestic abuse when dad's been involved, I can't actually think of one...".

As described earlier, M2 received a letter addressed solely to her, following the police being called because of an assault on her by her husband. M2's husband was not included in the letter, and this is indicative of the gendered expectations placed on mothers who have been abused within the home. By addressing the letter solely to M2, she was held responsible for

¹²⁵ Littlechild, B and Burke, C "Men's Use of Violence and Intimidation Against Family Members and Child Protection Workers" in Humphreys, C and Stanley, N *Domestic Violence and Child Protection, Directions for Good Practice* (2006) p.203

¹²⁶ Pahl, J "Coping with Physical Violence and Verbal Abuse" in Balloch, S, Mclean, J and Fisher, M *Social Services: Working Under Pressure* (1999)

her husband's abusive behaviour. The letter stated that "research indicates that children who are exposed to domestic abuse are at risk of emotional harm" and advised M2 that "[your child's] welfare does need to be placed at the forefront of both you and your husband's thinking." M2 was expected to somehow change her husband's abusive behaviour. During her interview, M2's social worker appeared to understand the burden of responsibility placed upon mothers:

"within the realm of domestic abuse, mums can feel they are blamed, they didn't act quickly enough, they aren't acting in their children's best interests..."

Yet, M2's husband was not engaged with the child protection process and her social worker told me:

"[perpetrator] hasn't wanted to engage with social services, whatsoever. From the outset, he is quite dismissive of social services and other professionals...he is quite avoidant..."

She explained that she had attempted to speak with him, but:

"The first communication I had [with him] was a telephone conversation whereby he was very aggressive...he has shown absolutely no admission of the fact that he is a perpetrator of domestic abuse and the more I get to know M2 the more I hear it really is a significant and psychological control that has been going on for years..."

M2's social worker was unable to pin the abuser down to a conversation, let alone able to complete any meaningful work with him. M4 voiced her experience of these disproportionate expectations:

"it's me that has to do everything, [perpetrator] don't have to do anything, and he's the one who's doing the stuff wrong. It's me that has to do everything, and I haven't done nothing wrong..."

M5's social worker quite openly admitted that she:

"didn't have the same relationship with [perpetrator] as I had with M5. That may have been because he was male. He didn't take on the advice given, and you could tell that he wasn't listening..."

M7's social worker had to engage with the father because the child was residing with him. Yet, even she told me,

"to be honest...I didn't have the opportunity to speak with him, like we're doing right now, because his partner was present all the time."

She indicated that because of his mental health issues, he required his new partner there to advocate for him. She explained:

"his partner did all of the talking through the meetings. He has mental health problems, he says he is not equipped to face and to cope, all these meetings, and, erm, his partner said she is taking up this role."

The effect of this was an expectation on M7 to manage the presence of her abusive ex-partner and his new partner in meetings, something that the social worker acknowledged placed M7

in a weak position where she was afraid to speak. It is interesting that the social worker was dubious about M7's mental health issues yet the ex-partner's mental health issues appeared to afford him the benefit of having his partner present to support him in meetings.

M9's social worker also spoke about her lack of engagement with M9's abusive ex-partner. She told me that he was "overbearing" and that "there was a period where he would ring me every day first thing in the morning...and he goes on and on and on about the same thing." She expressed relief at the fact that she did not have to work with him, because the issues with him were "around contact" which was not relevant to social services. The reason she gave me for her ongoing involvement with the family was, "the three years of private [proceedings]" which had "impact...on the family as a whole, and on the children; the animosity...was quite significant." However, the social worker did not recognise the ex-partner's use of the family courts as a form of post-separation abuse and did not recognise the need to work with the ex-partner around this issue. She did not identify that the harassing behaviour he displayed when phoning her constantly was parallel to the behaviour that he was displaying by continuously applying to the courts for variations of the child arrangements order.

When I spoke to some of the social workers more generally about this lack of engagement of abusive men, M4's social worker told me that "there may be some sort of avoidance...unconsciously, or consciously...that might be down to fear...", whilst M7's social worker told me that "most of the time [perpetrators are] really hostile, denying... I find it very difficult to produce any changes in them..." When I asked her if abusive fathers could be compelled to work with the child protection process, similarly to how the mothers tend to be compelled, she stated that:

“we don’t have any [way of] coercing them really. We’re just speaking to them...[explaining] the consequences of the situation...on the children... They don’t like social services to interfere in their lives, so we try to push these kind of buttons with them but we don’t have any *force* to use...”

The biopolitical and juridical forces within the family setting do not have the same effect on the men as they do on the women. The fathers can ignore the biopolitical forces because there is not the same undercurrent of threat from the juridical forces for them as there is for the mothers. The children cannot be removed from the fathers’ care because they are not in the care of their fathers, therefore there is no underlying coercion to adhere to the expertise of the social worker. Only one father had residence of his child, and he appeared to be benefiting from the social worker’s view that the child should stay where he was settled, so presumably did not have to worry about the child being placed back with the mother if he did not follow the social worker’s instructions. Fathers who do not have residence cannot be compelled to comply for fear of losing the right to care for their children. In fact, in chapter six I will examine how the family court encourages contact with the father, often regardless of his behaviour within the family setting prior to separation.

The majority of the social workers I spoke to appeared to find it the norm that the mothers were predominantly expected to safeguard the children from abuse, despite themselves being the victim. M4’s social worker recognised this to be the case:

“there’s so much onus on women being responsible for the situation particularly when they have children involved... Dads are off the

scene...they are often absent, and I think there is also the difficulty with perpetrators not being accountable...for their behaviours...”

The same social worker told me, “the reality is that no matter why a child is involved with social services, for me, you’re always working with the mum rather than the dad.” M5’s social worker told me that M5 “always engaged really well, she’s taken on advice...I would say she’s been more workable. [Ex-partner] wasn’t workable.” M8’s social worker told me that:

“I think I give more focus on the work with the victim to be honest. Because by culture, and even in Britain, mothers are the ones who are considered as people who care for children, isn’t it?”

Even within this small number of case studies, the expectations placed on the abused mothers by social workers are conflicting and confusing. A further conflict is that the expectation placed on the father is much less exacting, and in the majority of cases he is not engaged at all. These contradictory levels of expectation, based upon gender, do not promote the autonomy of the mother. She is not recognised as an autonomous person in her own right, but as a mother who has a duty to act in a particular way which is in line with the normative expectations of motherhood.

4.5 Conclusion

Within the relationship between the mother and the social worker there are biopolitical, juridical and gendered forces present. The expected practices of social workers within the PCF appear to have the objective of encouraging a partnership approach to working with families. The goal of partnership work is to reduce the coercive nature of the juridical forces within the child protection process, whilst also reducing the effects of the biopolitical forces present due

to the professional expertise of the social worker. The approach of working with the whole family within the multi-agency setting is intended to reduce the gendered expectations upon the mother. These expected practices have the overarching aim of balancing power relations between the mother and the social worker, in order to make their relationship more equal.

The majority of the mothers' experiences were contrary to these expected practices. The social workers' lack of understanding of the mothers' experiences meant that they exercised their expertise in such a way that the mothers' voices were forgotten. The mothers expressed their dismay at not being listened to and understood by social workers. They expressed feelings of coercion to behave in a particular way to reduce the threat of court proceedings against them. The case studies gave many examples of gendered expectations towards both the mother and the father, which heaped responsibility onto the mother, despite her being a victim of abuse, whilst completely omitting the abusive father from the process. Social work practice also continues to separate the abuse experienced by the mothers and the abuse experienced by the child, concentrating wholly on advocating for the safety of the child and not taking into account consideration that the mother and the child are a unit. The mothers' experiences of abuse were dismissed as unimportant, or as untrue. This meant that social workers were unable to properly respond to the mothers' needs, which alienated the mother from the process. Opportunities to work in partnership were lost and the mothers' ability to provide protective measures for her own child were undermined. It is clear from this study that the majority of the relationships between the mothers and the social workers did not promote the mothers' autonomy, whilst some of the relationships appeared to actively dismiss the notion of the mother as a person in her own right.

In the next chapter the relationship between the abused mother and the police will be examined through the relational lens.

Chapter Five – The Abused Mother and the Police

5.1 Introduction

This chapter examines the relationship between the abused mother and the police. All but one of the mothers I interviewed were involved with the police because of the abuse they had been subjected to by (ex)partners. Unlike other emergency services, a victim's relationship with the police may continue after an incident. Once the police have ensured that all parties at the scene of a crime are safe and arrests have been made, they have the responsibility of gathering the evidence required to prosecute the suspect. The mother may therefore have ongoing contact with the police beyond an emergency call. In addition to the mothers' interviews, I interviewed police personnel of various ranks to allow a greater perspective on the police response to domestic abuse. As described in the methodology, there were limitations to the scope of my study, a consequence of which is that this chapter will not examine the mothers' relationships with the criminal justice system beyond the arrest and charging, or otherwise, of their abusers.

My interviews with the mothers and the police took place between 2014 and 2015. From 2010 policing in England and Wales has undergone significant reforms which have been set against the backdrop of cuts in police numbers due to the austerity measures introduced by the Conservative-led Coalition Government.¹

¹ Chapman, J, Higgins, A and Hales, G *Police Effectiveness in a Changing World: The Slough Site Report* (December 2017) p.14-16 Available < <http://www.police-foundation.org.uk/publication/police-effectiveness-changing-world-slough-site-report/>> Accessed 12th May 2018

The government from 2010 took a new approach to policing² which included abolishing performance targets.³ Instead police forces were told by the Home Secretary simply to cut crime, “nothing more, nothing less.”⁴ Her Majesty’s Inspectorate of Constabularies (HMIC) produced a report in 2014⁵ on the police response to domestic abuse, which was followed by a progress report in 2015.⁶ I will refer to these throughout the chapter.

5.2 Legal Framework, Policies and Procedures

5.2.1 Criminal Offences

Between 2014 and 2015 domestic abuse constituted 10 percent of all recorded crime,⁷ with “domestic” incidents accounting for 25 percent of all arrests for assault with intent, 37 percent of all arrests for assault with an injury, 46 percent of all arrests for harassment and 15 percent of all sexual offences. Yet until recently English law did not directly criminalise domestic abuse.⁸

Offences against the person are those which are most often used to prosecute perpetrators of domestic abuse. The offences range in seriousness. The least

² Home Office *Policing in the 21st Century: Reconnecting Police and the People* (September 2010) Available<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118241/policing-21st-full-pdf.pdf> Accessed 23rd April 2018

³ For a discussion on the targets and league tables of the New Public Management model of policing see Reiner, R *The Politics of the Police* (4th ed) (2010) p.24

⁴ Home Office *Speech by the Rt Hon Theresa May MP to the Association of Chief Police Officers and Association of Police Authorities National Conference* (29 June 2010) Available<<https://www.gov.uk/government/speeches/police-reform-theresa-mays-speech-to-the-national-policing-conference>> <<https://www.gov.uk/government/speeches/police-reform-theresa-mays-speech-to-the-national-policing-conference>> Accessed 23rd April 2018

⁵ Her Majesty’s Inspectorate of Constabularies (HMIC) *Everyone’s Business: Improving the Police Response to Domestic Abuse* (2014)

⁶ Her Majesty’s Inspectorate of Constabularies (HMIC) *Increasingly Everyone’s Business: A Progress Report on the Police Response to Domestic Abuse* (December 2015)

⁷ *ibid* p.8

⁸ Stark, E “Policing Partner Abuse and the New Crime of Coercive Control” *Family and Intimate Partner Violence Quarterly* 8 (4) (2016) p.347

serious is common assault,⁹ which is committed either by putting someone in fear of violence, or by battery. More serious offences available under the Offences Against the Person Act 1861 include assault occasioning actual bodily harm (ABH), malicious wounding, or “inflicting grievous bodily harm” (GBH), and GBH with intent.¹⁰ It is also a criminal offence to make threats to kill.¹¹ The offence of rape is defined by s.1(1) of the Sexual Offences Act 2003. Marital rape became an offence in 1991;¹² prior to this the view at common law was that by marrying, a woman gave continuous consent to sexual intercourse with her husband and she could not withdraw that consent whilst she remained married to him. Also included in the 2003 Act are the offences of assault by penetration,¹³ and sexual assault.¹⁴ The Criminal Damage Act 1971 makes it an offence to destroy or damage another person’s property intentionally.¹⁵ Other property offences which police may utilise in domestic abuse cases include theft¹⁶ and burglary.¹⁷ The Protection from Harassment Act 1997 created the offences of “harassment”¹⁸ and “putting a person in fear of violence.”¹⁹ These offences are reliant on proof of a “course of conduct”. Since 2012 two further offences of “stalking” and “stalking involving fear of violence” have been available.²⁰

⁹ Charged under Criminal Justice Act 1988 S.39 this is a summary offence

¹⁰ s.47, s.20 and s.18 respectively

¹¹ Offences Against the Person Act 1861 s.16

¹² R [1991] 4 All ER 481, 919910 94 Cr App R 216

¹³ Sexual Offences Act 2003 s.2 (1)

¹⁴ Sexual Offences Act s.3

¹⁵ Criminal Damage Act 1971 s.1 (1)

¹⁶ Theft Act 1968 s.1 (1)

¹⁷ Theft Act s.9 (1)

¹⁸ Protection from Harassment Act 1997 s.2

¹⁹ Protection from Harassment Act s.4

²⁰ Protection from Harassment Act s.2A and s.4A respectively

As discussed in earlier chapters, the governmental definition of domestic abuse has included coercive and controlling behaviours since 2013. A pattern of coercive and controlling conduct in an intimate relationship became a criminal offence under s.76 of the Serious Crime Act 2015. Under this legislation a criminal offence is committed if one person continuously engages in controlling or coercive behaviour towards someone to whom they are personally connected²¹ and that behaviour has a serious effect on the victim. In a similar way to the harassment offences a course of conduct must be proven, which causes the victim “serious alarm or distress” and which has a “substantial adverse effect” on the victim’s day-to-day activities. Implementation of the s.76 offence has been slow and despite the wide prevalence of domestic abuse, convictions for controlling or coercive behaviour have been low.²² My case studies were completed prior to the introduction of the new legislation.

5.2.1 Civil Orders

The police also have involvement with civil orders which are routinely used to deal with domestic abuse. The Protection from Harassment Act 1997 provides civil remedies for harassment in the form of injunctions²³ which are available to protect the victim and includes penalties for breaches of these orders.²⁴ Restraining orders²⁵ are also available under the 1997 Act and these have powers of arrest

²¹ A “personal connection” is identified as either an intimate relationship, or where two people live together and are members of the same family, or where two people live together and have previously been in an intimate relationship

²² Wiener, C “Seeing What is ‘Invisible in Plain Sight’: Policing Coercive Control” *The Howard Journal* 56 (4) (2017) p.501

²³ Protection from Harassment Act 1997 s.3

²⁴ Protection from Harassment Act s.3(3) – s.3(9)

²⁵ Protection from Harassment Act 1997 s.5 and s.5A

attached to them in cases of breach. Constable P1 explained how the police are involved in applying for restraining orders:

“[It is an] automatic thing...when we’re completing a file for a domestic offence...we would apply for the restraining order on conviction or acquittal if the victim wants it, because that way it’s no effort to them, no cost to them, it’s done on behalf of them by us, and it forms part of the punishment so to speak.”

Non-molestation orders, and occupation orders are protective civil orders which are available to the victim under the Family Law Act 1996.²⁶ The victim can apply for these orders herself in the family court. The application process does not involve the police however breach of a non-molestation order is a criminal offence²⁷ and powers of arrest can be attached to an occupation order upon application. The police should therefore become involved upon the breach of an order. They also have a duty to store records of these civil orders. The court should supply the police with a copy of all civil orders, which a police administrator will upload to the police records for the individuals involved. As Detective Inspector P2 explained:

“So that when a police officer goes to that call they know that they can access a copy of the non-molestation order

²⁶ s.42 and ss.33-38 respectively

²⁷ Domestic Violence Crime and Victims Act 2004 s.1

to find out exactly what the terms are and determine what is breached and what is not...”

He went on to talk about the police role in upholding civil orders:

“If people feel that the answer to their problem is not to go through the criminal process but to get protection through the family courts, I think it’s very important that we cooperate with that. I think it’s very important that we help to enforce it as well.”

5.2.2 Domestic Violence Protection Notices and Orders

The Crime and Security Act 2010 introduced Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs)²⁸ which were implemented in England and Wales in 2014, following regional pilots across three English police forces. The DVPN can prohibit a suspected abuser from attending a property for up to 48 hours and can be issued by an officer above the rank of superintendent, if they have reasonable grounds for believing that a person has been violent or threatened violence.²⁹ The parties involved must be associated persons³⁰ and the police do not require the victim’s consent to issue the DVPN. Within 48 hours of the DVPN being served, a constable must apply to the Magistrates court for a DVPO. This order prohibits the suspected abuser from entering a property for between 14 and 28 days,³¹ and does not require the

²⁸ s.24 and s.27 respectively

²⁹ s.24(2)

³⁰ Family Law Act 1996 s.62

³¹ s.28(10)

consent of the protected party.³² There are civil sanctions available for breaches of both the DVPN and the DVPO.³³ The objective of the DVPO is to provide the victim with breathing space,³⁴ “allowing referrals to support services without interference.”³⁵ There is no compulsory requirement for officers to ensure victims are supported by domestic abuse services, although guidelines highlight this as good practice.³⁶ The mothers in my study did not have experience of DVPNs or DVPOs as they became available to the local police force towards the end of the period when I conducted interviews. However, the officers interviewed were aware of them as they were about to be launched across the force. Constable P1 confirmed that she had recently completed the eLearning package on DVPOs, and told me:

“I think they are going to be perfect where we may arrest an offender but at the end of the day we don’t have enough evidence, maybe the victim won’t support it, won’t give a statement... We can use that to safeguard the victim without their permission...because they won’t go to court, we go...we can implement it from our perspective.”

³² s.28(5)

³³ s.26 and s.29 respectively

³⁴ Duggan, M “Victim Hierarchies in the Domestic Violence Disclosure Scheme” *International Review of Victimology* 24 (2) (2018) p.202

³⁵ Available < <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/arrest-and-other-positive-approaches/domestic-violence-protection-notice-and-domestic-violence-protection-orders/> > Accessed 22nd June 2018

³⁶ *ibid*

She recognised that as a new initiative it would take time to embed into police work but likened this to the introduction of the DASH risk assessment tool, which she said is “done as second nature now.”

5.2.3 Domestic Violence Disclosure Scheme (DVDS)

A further provision which requires the involvement of the police is the Domestic Violence Disclosure Scheme (DVDS). This scheme, also known as Claire’s Law, allows applicants to request information about another person’s criminal history, which:

“enables new partners of previously violent individuals to make informed choices about how and whether they take forward that relationship.”³⁷

Statutory agencies have always had a safeguarding duty to share information.³⁸ As Constable P1 explained:

“Social services have always had the power where children are involved to [disclose], although I don’t know how often they have exercised that?”

The DVDS has introduced a recognised and consistent procedure for disclosing information. The scheme has two entry routes, the “Right to Ask” (RtA)³⁹ and the “Right to Know” (RtK).⁴⁰ The RtA route is initiated by a member of the public, whilst the RtK route formalises the process for professionals which was already in place.

³⁷ Available: <[https://www.kent.police.uk/policy/crime-and-intelligence/n07-domestic-abuse/n07c-domestic-violence-disclosure-scheme-\(dvds\)](https://www.kent.police.uk/policy/crime-and-intelligence/n07-domestic-abuse/n07c-domestic-violence-disclosure-scheme-(dvds))> Accessed 27th March 2018

³⁸ Duggan, above n 34 p.200

³⁹ Home Office *Domestic Violence Disclosure Scheme (DVDS) Guidance* (December 2016) p.8

⁴⁰ *ibid* p.14

Upon receiving a DVDS application, the decision to disclose information sits with a multi-agency forum.⁴¹ The scheme forms part of the Government's Violence Against Women and Girls (VAWG) strategy, which aims to reduce the prevalence of domestic abuse. One mother told me that she had used the scheme to obtain information about someone she had a new "friendship" with. She explained that the police did not have any information to disclose to her about this person (she did not specify their gender) which helped her to decide whether she should enter into this relationship. She told me that:

"I'm really pleased you can walk in [to the police station] now...and ask about anybody... I think it's good they've got that in place, so before you enter into a relationship or friendship...you know [if] he's got a history of domestic violence...you can find out if these people are perpetrators or have a history of domestic violence."

5.2.4 Domestic Abuse Policies

Each police force is expected to have a domestic abuse policy.⁴² In the context of my case studies the relevant policy was policy N07 of Kent Police.⁴³ Compliance with this policy is mandatory for all police officers when responding to domestic abuse incidents. The policy requires that "all victims of domestic abuse should

⁴¹ *Ibid* p.17

⁴² HMIC above n 5 pp. 19-20

⁴³ Kent Police June 2015

receive the appropriate quality of service according to their individual needs.”⁴⁴

The Kent police priorities, which are outlined in this policy are:

- To protect the lives of both adults and children who are at risk as a result of domestic abuse;
- To investigate all reports of domestic abuse;
- To facilitate effective action against offenders so that they can be held accountable through the criminal justice system;
- To adopt a proactive multi-agency approach in preventing and reducing domestic abuse.⁴⁵

Policy N07 also expects “where a substantive offence has been committed or is suspected there will be a presumption in favour of arrest.”⁴⁶ Nationally, the College of Policing has produced Authorised Professional Practice on Domestic Abuse⁴⁷ (APP) which details the expectation for “positive action”⁴⁸ when responding to domestic abuse incidents. Positive action refers to actions which should be taken against a suspected perpetrator. These actions include the requirement for officers to justify any decision not to make an arrest and the requirement to look beyond the current incident to a wider context. Other examples of positive action include the removal of a suspected perpetrator from

⁴⁴ s.2.3

⁴⁵ s.3.1

⁴⁶ s.3.3

⁴⁷ Available < <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/> > Accessed 6th May 2018

⁴⁸ Available < <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/arrest-and-other-positive-approaches/> > Accessed 6th May 2018

the scene of the crime, serving a DVPN and advising the victim of the civil orders she can obtain to protect herself. Constable P1 explained how she interprets the positive action policy:

“Basically, not to leave the victim and the perpetrator together where possible, in as many cases as possible remove one or the other, or even if you separate them at that time for a cooling off period depending on what’s going on. The officers are encouraged at the scene to do background checks via their radios on the perpetrator and the victim to check what previous there’s been, if they’re a serial perpetrator, if there’s risk factors as in drugs, alcohol, weapons, that kind of thing. And depending on what the situation is, depends how they separate the couple, whether that’s to arrest one of them... Very rarely are the couple left together...”

The national APP guidance also details a whole raft of expectations for ensuring the safety and support of victims.⁴⁹ Included in this is guidance on risk assessing and safety planning, special measures for court hearings, victim personal statements to support the prosecution’s case, referrals for IDVA support and the DVDS, all of which will be discussed below. There is also the requirement for “proactive investigation” of domestic abuse incidents, which expects that “police

⁴⁹ Available <<https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/victim-safety-and-support/>> Accessed 6th May 2018

officers should not base a decision to arrest or not to arrest on the willingness of a victim...[to] participate in judicial proceedings.” The guidance includes advice on which sanctions are not suitable for domestic abuse cases, such as cautions, restorative justice and penalty notices.

Both local and national policies are clear on the requirement for completion of a “generic risk assessment” by officers at the scene of a domestic abuse incident. The local guidance states that:

“Police officers and police staff will adopt a generic risk assessment in line with the relevant procedure and in accordance with their individual roles.”⁵⁰

The national policy is extensive⁵¹ and begins by detailing various options for carrying out risk assessments. It cites “structured professional judgement” as the most commonly used method, which is based around a standard risk assessment tool. The guidance warns of the limitations of this method, which includes a lack of research available to evidence that certain indicators are able to predict future abuse. Accuracy of the risk assessment is also dependent on the information provided by the victim, which is a further limitation. The guidance also advises that “forces should avoid grading the level of risk solely on the number of ‘yes’ responses.” There is a requirement for a “primary risk assessment” to be completed at the scene by the attending officer, which should be followed up by

⁵⁰ s.5.1

⁵¹ Available < <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/risk-and-vulnerability/> > Accessed 6th May 2018

periodically completed “secondary risk assessments.” Officers are required to take notice of emerging “patterns indicative of controlling or coercive behaviour.”

5.2.5 Police Processes

The police are most commonly alerted to criminal incidents by telephone, when members of the public, or the victim themselves, call for emergency assistance. In the United Kingdom a non-emergency number and online resources are also available to report a crime which has already occurred and where there is no immediate danger. Some crimes are also reported to front counter staff at local police stations. The police have a range of response expectations depending on the crime type⁵² and as the domestic abuse policies above indicate, the police are expected to respond in a specialised way when a call about domestic abuse is received. The first stage of the police response to a domestic abuse incident, as with all crime types, sits with the call handler or the front counter staff. The staff in these roles may be warranted police officers or civilian police staff. The police response begins as soon as a report is made, at this stage the incident may or may not be categorised as domestic abuse and may or may not be categorised as a crime.⁵³ The call handler must convey details from the call to the police officer who is dispatched to the incident as an “initial responder”. The information which is passed to the initial responder must include the context of the call, along with any research available from the police databases about the history of those involved

⁵² For a discussion of how specific crime types place different demands on police resources see: College of Policing *Estimating Demand on the Police Service* (January 2015)

⁵³ Myhill, A and Johnson, K “Police use of Discretion in Response to Domestic Violence” *Criminology and Criminal Justice* 16 (1) (2016) p.10

who may be at the property.⁵⁴ The initial responder's priority when arriving at an incident of any crime type is to ensure the safety of everyone at the scene.⁵⁵ In situations of domestic abuse, this specifically includes separating the parties involved and determining the welfare of any children in the home.⁵⁶ Whilst at the scene the victim's risk level of death or serious injury must be ascertained using the risk assessment tool. Resources are allocated according to the risk level. If the risk is assessed as high, the victim will be referred to MARAC and the case is transferred to specialist officers.

The initial phase of any criminal investigation takes place at the scene of the crime, as soon after the incident as possible to ensure evidence is preserved.⁵⁷ The police officer attending the scene must note the demeanour of all parties involved, take photos of injuries or damage to the property and ask all parties to give a first account of the incident. Any physical or forensic evidence must be gathered, along with any CCTV or social media evidence which may be available.⁵⁸ The investigation will then proceed beyond the initial call out, and will be allocated to an Officer in Charge (OIC) who becomes responsible for gathering information

⁵⁴ See < <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/call-handler-and-front-counter-staff-response/#checklist-information-gathering> > Accessed 12th June 2016

⁵⁵ See < <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/first-response/#ensure-immediate-safety> > Accessed 12th June 2016

⁵⁶ See < <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/first-response/#duties-in-relation-to-safeguarding> > Accessed 12th June 2016

⁵⁷ See < <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/investigative-development/> > Accessed 12th June 2016

⁵⁸ See < <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/investigative-development/#technology-and-social-media> > Accessed 12th June 2017

from police databases, obtaining witness statements⁵⁹ and accessing medical records. Following an offender being charged, the OIC works with the victim to obtain a victim personal statement.⁶⁰ This statement is used by prosecutors to illustrate to the court how the perpetrator's behaviour has impacted on the victim and their children. This can add credence to the prosecution's case. The OIC is also responsible for assisting the victim with any requests for special measures at court; these can include a screen within the court, or a video link, to protect the victim from being in the same room as their abuser.⁶¹

All domestic abuse cases must be charged by the Crown Prosecution Service (CPS).⁶² Officers must liaise with the CPS to determine whether the evidence they have gathered will satisfy the Evidential Stage of the Full Code Test,⁶³ namely that there is sufficient evidence for a realistic prospect of conviction.⁶⁴ If there is not enough evidence to charge, the suspect may be released from custody with no further action and the incident is recorded as a no-crime.⁶⁵ Alternatively, if there is reason to believe further evidence can be sought, the suspect can be released on pre-charge police bail pending further investigation.⁶⁶ There may be conditions

⁵⁹ See <<https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/investigative-development/#victim-and-witness-evidence>> Accessed 12th June 2017

⁶⁰ See <<https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/victim-safety-and-support/?s=victim+personal+statement+#victim-personal-statement>> Accessed 12th June 2017

⁶¹ Ministry of Justice *Vulnerable and Intimidated Witnesses: A Police Guide* (March 2011)

⁶² Crown Prosecution Service *Charging (The Director's Guidance)* (5th eds) (2013) Paragraph 15

⁶³ Available <<https://www.cps.gov.uk/publication/full-code-test>> Accessed 6th May 2018

⁶⁴ Crown Prosecution Service *Domestic Abuse Charging Advice Sheet* (2015) Available <<https://www.cps.gov.uk/publication/domestic-abuse-charging-advice-sheet>> Accessed 6th May 2018

⁶⁵ Available <<https://www.cps.gov.uk/legal-guidance/charging-directors-guidance-2013-fifth-edition-may-2013-revised-arrangements>> Accessed 8th May 2018

⁶⁶ Police and Criminal Evidence Act 1984 ss. 37(2), 34(2) and 34(5)

attached to police bail⁶⁷ and if police have reason to believe the conditions have been breached they have the power of arrest.⁶⁸ Once the CPS has charged the suspect, there is a presumption that the offender will be released from custody on bail⁶⁹ unless exceptions apply. For example, where the offence is of a serious nature or where there have been previous breaches of bail, the suspect may be remanded in custody pending a court appearance. Bail conditions may be applied, which may include not contacting the victim or witnesses. Conditions must only be put in place to address risks and must be proportionate, reasonable, necessary and enforceable.⁷⁰ The police have powers of arrest if bail conditions are breached⁷¹ and the suspect must be brought before a magistrate's court to deal with the breach within 24 hours of the arrest.⁷² The court may then remand the suspect in custody or place further bail conditions on the suspect.⁷³

5.3 The Police and the MARAC

As introduced in chapter three, the MARAC process forms part of the Coordinated Community Response (CCR) to domestic abuse, which also includes the IDVA role. The MARAC brings together the agencies and professionals who may have insights into the survivors' lives, with the objective of reducing risk and re-victimisation.⁷⁴ The reduction of risk reduces a victim's need for the police⁷⁵ which in turn reduces

⁶⁷ Police and Criminal Evidence Act 1984 s.47(1A)

⁶⁸ Police and Criminal Evidence Act s.46A(1A)

⁶⁹ Bail Act 1976 s.4

⁷⁰ Available <<https://www.cps.gov.uk/legal-guidance/bail>> accessed 6th May 2018

⁷¹ Bail Act s.7(3)

⁷² Bail Act s.7(4)

⁷³ Bail Act s.7(5)

⁷⁴ Robinson, A L "Reducing Repeat Victimisation Among High Risk Victims of Domestic Violence: The Benefits of a Coordinated Cardiff, Wales" *Violence Against Women* 12 (8) (2006) pp.761-788

⁷⁵ SafeLives *Defining MARAC Outcomes National Pilot* (2012)

the cost of domestic abuse for police forces.⁷⁶ The MARAC process itself is recognised as an important element of the police response to domestic abuse.⁷⁷ High risk domestic abuse cases sit within the remit of dedicated policing teams who are trained to respond to domestic abuse as specialists and who have the task of attending the MARACs. Unlike the policies discussed above, MARACs are voluntary consortiums.⁷⁸ Despite the MARAC process being a multi-agency forum, the police are the agency who are predominantly involved with the process in its entirety.⁷⁹ The majority of referrals to the MARAC are made by the police. The police are always in attendance, the local MARAC coordinators tend to be police personnel and in the majority of cases a senior police officer is the MARAC chair. The police are also allocated a large proportion of the proposed actions to address the victim's safety needs.⁸⁰

5.4 The Mothers' Relationships with the Police

The police responded to the mothers as victims of a crime, as and when incidents occurred. This meant the mothers' relationships with the police were varied, with different police officers attending each incident and the mothers' "cases" being allocated to other officers or departments following the initial emergency contact. Unlike the relationships that the mothers had with their advocates, their social

⁷⁶Robinson, A L "A Risk Led Approach to Domestic Violence: The MARAC Model in the UK" *International Conference on Violence in Close Social Relationships and Stalking – Police Officers Dealing with High-Risk Cases* Rhineland-Palatinate Police Academy, Germany (5th November 2013)

⁷⁷ Home Office *above n 6* pp.83-86

⁷⁸ Stark, *above n 8* p.348

⁷⁹ Reeves, C "How Multi-agency are Multi-Agency Risk Assessment Committees?" *Probation Journal* 60 (1) (2012) p.46

⁸⁰ Robinson, *above n 76*

workers or their solicitors, the relationship with the police is an “institutional” relationship and is not specific to one individual police officer.

5.4.1 The Setting

The relationship between the abused mother and the police occurs within the private family setting, and more specifically as a part of the mother’s relationship with her abuser. A domestic incident requires a specialist response from police due to the complexities of abuse within the home which have been discussed in previous chapters. Police have historically been reluctant to attend such incidents,⁸¹ the expectation being that the issues were of a private nature which should be resolved within the family. Police have historically viewed incidents within the home as not being their concern, and domestic abuse calls as being “rubbish work”⁸² as an often-cited quote from Reiner’s 1985 study shows:

“With domestic disputes, the husband and wife going hammer and tongs, you have to separate them, calm them down before you go. And you are not doing a policeman’s job; you are doing a socialist’s⁸³ (sic).”⁸⁴

Although this is a historic view, it was echoed in a 2014 study which identified that call handlers in an emergency services’ control room felt frustrated that “those on

⁸¹ Edwards, S *Policing Domestic Violence: Women, the Law and the State* (1989) p.101

⁸² *ibid* p.100

⁸³ The word socialist appears to have been misused by the interviewee in place of the word “social worker”

⁸⁴ Reiner, R *The Politics of the Police* (1985) p.95

the frontline, they don't want to deal with [domestic abuse]."⁸⁵ More recently, Robinson et al found that:

"some officers did, however, reflect rather pejorative attitudes towards certain types of situations and protagonists...[including] frustration with being repeatedly called to "minor issues" at the same address."⁸⁶

Ambivalence is compounded by the fact that within the home a police presence can be viewed as an unwanted intrusion when the victim did not call the police for themselves.⁸⁷ And when the police have been called by the victim, this is not necessarily for the perpetrator to be arrested⁸⁸ but simply for the abusive behaviour to stop.⁸⁹ As Hoyle points out:

"Women used the word 'protection' more than any other word when discussing both what they wanted and what they got from police."⁹⁰

5.4.2 Forces Present in the Private Family Setting

Gendered forces are nested in the family setting and specifically in the mother's relationship with her abuser as discussed in previous chapters. When the police

⁸⁵ Monckton-Smith, J, Williams, A and Mullane, F *Domestic abuse, Homicide and Gender: Strategies for Policy and Practice* (2014) p.86

⁸⁶ Robinson, A L, Myhill, A and Wire, J "Practitioner (Mis)Understandings of Coercive Control in England and Wales" *Criminology and Criminal Justice* 18 (1) (2018) p.37

⁸⁷ Hoyle, C and Sanders, A "Police Response to Domestic Violence: from Victim Choice to Victim Empowerment" *British Journal of Criminology* 40 (1) (2000) p.14

⁸⁸ *ibid* p.22

⁸⁹ Fitz-Gibbon, K and Walklate, S "The Efficacy of Claire's Law in Domestic Violence Law Reform in England and Wales" *Criminology and Criminal Justice* 17 (3) (2016) pp.284-300

⁹⁰ Hoyle, C *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (1998) p.194

become involved with the family, they introduce juridical power into the setting. Moreover, the police are increasingly expected to respond in a specialised way to domestic abuse, which generates biopower in the setting. These forces interact with the nested gendered forces, and the police introduce additional gendered forces into the setting, which originate from within police culture as well as gendered expectations of the mother as a victim of domestic abuse.

5.4.2.1 Juridical Power

“The basic mission of the police is to improve the safety and well-being of the people by promoting measures to prevent crime, harm and disorder.”⁹¹

To enable them to carry out this mission police officers are able to “exert a coercive power over citizens” which is not available to most other agencies.⁹² It is the ability to use “force” against fellow citizens that is the defining characteristic of a police officer.⁹³ The coercive power is not necessarily physical - officers engage in persuasion and negotiation in most situations - however the ability to use force (via the power of arrest) is always present.⁹⁴ The police operate within the criminal justice system, utilising the criminal law in their pursuit of “emergency order-maintenance.”⁹⁵ They are agents of juridical power, which is nested in all of their relationships and which they transfer into the family setting when responding to

⁹¹ Independent Police Complaints Commission *Policing for a Better Britain: Report of the Independent Police Commission* (2013) p.31

⁹² Rowe, M *Introduction to Policing* (2018) p.6

⁹³ Bittner, E “Florence Nightingale in Pursuit of Willie Sutton: A Theory of the Police” in Jacob, H (ed) *The Potential for Reform of Criminal Justice* (1974)

⁹⁴ Rowe, above n 92

⁹⁵ Reiner, R *The Politics of the Police* (2000) p.136

domestic abuse. The abused mother is able to utilise this power, even in the short term, by calling the police to remove her abuser.⁹⁶ The repressive threat of juridical power⁹⁷ in the form of sanctions, fines or prison sentences, may also reduce the risk of harm to the mother in the long term, but only if the abuser is influenced by this threat and adapts his behaviour to avoid it. As discussed in chapter two, abusers may also exploit the power of the law to exert control over their partner or ex-partner. For example, it is clear from M9's files that her ex-partner had made malicious calls to police regarding M9's care of their child, which will be discussed in more detail below.

The decision to utilise the power of law and arrest someone suspected of a crime sits with the officer attending the scene. Police discretion has been a theme of academic research since the 1960s⁹⁸ with various studies into the work of police officers concluding that policing does not involve simply following a "book of rules."⁹⁹ Traditionally decision-making has been recognised as a function of the "craft of policing,"¹⁰⁰ with Bayley and Bittner claiming nearly thirty years ago that, "the life police officers confront is too diverse and complicated to be reduced to simple principles."¹⁰¹ As Rowe explains:

⁹⁶ Brown, S "Police Responses to Wife Beating: Neglect of a Crime of Violence" *Journal of Criminal Justice* 12 (1984) pp.277-288

⁹⁷ Connell, R *Gender and Power* (1987) p.109

⁹⁸ Goldstein, H "Police Discretion: The Ideal Versus the Real" *Public Administration Review* 23 (3) (1963) pp.140-148

⁹⁹ Sheering, C and Ericson, R "Culture as Figurative Action" in Newburn, T (eds) *Policing – Key Readings* (2015) p.320

¹⁰⁰ Bayley, D and Bittner, E "Learning the Skills of Policing" *Law and Contemporary Problems* 47 (4) (1984) pp.35-59

¹⁰¹ *Ibid* p.35

“The ‘black letter’ of the criminal law provides only a very weak indication of what police officers actually do: this is partly because individual officers operate with considerable discretion...”¹⁰²

It would be practically impossible to enforce all laws on all occasions.¹⁰³ Rowe explains that due to limited resources, it is therefore necessary for police officers of all ranks to prioritise which laws are enforced, and to what extent they are enforced.¹⁰⁴ Response officers have to make these decisions on a “moment to moment basis, often without a moment’s reflection.”¹⁰⁵

Changes in the administration of police work when responding to domestic abuse are intended to reduce the level of discretion used at domestic abuse incidents. As Inspector P3 commented, “discretion’s in, but we don’t use it quite so widely with DA.” As introduced above, police forces’ domestic abuse policies include the presumption of arrest.¹⁰⁶ Detective Inspector P2 explained why the use of discretion when making an arrest in domestic abuse cases has been replaced by the presumption of arrest:

“The trouble with domestic abuse, is that very often it is quite subtle...perpetrators of domestic abuse are very eloquent...the victims are the exact opposite and are unable to express their real concerns or are afraid to. So, if

¹⁰² Rowe, above n 92 p.9

¹⁰³ Reiner above n 95 chapter 3

¹⁰⁴ Rowe, above n 92 p.118

¹⁰⁵ Sheering and Ericson, above 99 p.320

¹⁰⁶ s.3.3

you...have normal discretion around domestic abuse, it very much depends on the particular individual police officer's understanding of domestic abuse and being able to spot the subtleties of it."

Constable P1 told me that "there's very little discretion left now, it's governed by policy and protocols." There is also increased scrutiny of officers in the form of inspections by HMIC and the Independent Police Complaints Commission (IPCC),¹⁰⁷ particularly in response to domestic homicides.

However, the concept of discretion remains problematic for officers when responding to domestic abuse. Despite policy requiring the reduction of discretion, Myhill maintains that due to the broad definition of domestic abuse, discretion remains integral to the frontline officer's response to domestic incidents.¹⁰⁸ Officers are expected to identify a pattern of behaviours, which are potentially invisible to everyone but the victim and the abuser.¹⁰⁹

"The lack of definitional clarity around non-physical domestic abuse can increase discretion by frontline services and by extension, increase the discounting of coercive control by pressurised front-line officers."¹¹⁰

¹⁰⁷ Heaton, R "We Could all be Criticised! Policing and Risk Aversion" *Policing* 5 (1) (2011) pp.75-86

¹⁰⁸ Myhill, and Johnson, above n.53 p.14

¹⁰⁹ Tolmie, J "Coercive Control: To Criminalize or not to Criminalize?" *Criminology and Criminal Justice* 18 (1) (2018) p54

¹¹⁰ Brennan, I, O'Leary, N, Burton, V and Gormally, S "Service Provider Difficulties in Operationalising Coercive Control" *Violence Against Women* (2018) (pre-print accepted manuscript) Available <<https://osf.io/preprints/socarxiv/8cz5a/>> Accessed 27th April 2018

Conversely, the expectation to arrest whenever possible can lead the officer to make arrests to ensure they have “covered their backs” rather than utilising juridical power specifically to protect and support the victim.¹¹¹ In both Rowe’s¹¹² and Myhill’s studies officers were aware that their decisions would later be scrutinised by senior officers, and that they would not be supported by their managers if they did not make an arrest without a very good reason. This scrutiny is specific to domestic abuse cases and caused officers to be “risk averse.”¹¹³

In summary, the juridical power which is nested in the relationship between the mother and the frontline officer is not the mother’s to wield. It may be utilised by the police to protect the mother, but this structures the relationship in a way that renders the mother reliant on the police officer to deploy juridical power on her behalf. Juridical power is used by the police against the perpetrator; the mother’s involvement is incidental and whilst she may benefit from the protection of the law this is simply a consequence of the power exerted by the police as part of the criminal justice system.

5.4.2.2 Biopower

As discussed in chapter two, the Government’s domestic abuse policies can be recognised as having certain biopolitical aims which permeate the wider police response to domestic abuse. For police agencies domestic abuse is a financial

¹¹¹ Loftus, B *Police Culture in a Changing World* (2009) p.133

¹¹² Rowe, M “Rendering Visible the Invisible: Police Discretion, Professionalism and Decision-Making” *Policing and Society* 17 (3) (2010) p.279-294

¹¹³ Myhill, A “Renegotiating Domestic Violence: Police Attitudes and Decisions Concerning Arrest” *Policing and Society* (2017) p.12

burden, making up nearly 20 percent of all crime in 2016/2017.¹¹⁴ Therefore, reducing the number of domestic abuse incidents reported to police also reduces costs. The Government's VAWG Strategy¹¹⁵ states that "[domestic abuse] reoffending rates and breaches of protection orders are high."¹¹⁶ The strategy calls for an improved criminal justice response, in order to lower the level of offending.¹¹⁷ The police are tasked with not just responding to domestic abuse but doing it in such a way that reduces the number of incidents.

At the scene of an incident officers are expected to use their discretion in determining if the incident they are responding to fits the definition of domestic abuse and therefore requires the completion of the risk assessment tool. As Detective Inspector P2 explains:

"A couple came home at night with their children... Somehow between getting from the car to the door they lost their keys and they started arguing, saying 'what have you done with them?' quite reasonably. One of the neighbours heard it and reported it, and the police officer turned up, carried out a quick search, found the keys had been dropped on the lawn... The officer decided that's actually a domestic incident because they're arguing."

¹¹⁴ The Crown Prosecution Service (CPS) *Violence Against Women and Girls Report 2016-2017* (November 2017)

¹¹⁵ HM Government *Ending Violence Against Women and Girls Strategy 2016-2020* (March 2016)

¹¹⁶ *ibid* p.12

¹¹⁷ *ibid* p.14

He understood that this was possibly an overzealous interpretation of the situation but considered that officers were completing risk assessments in more situations through fear of missing someone who is a victim of domestic abuse. The irony is that, contrary to the Government's drive to reduce domestic abuse, there may be more incidents categorised as such, due to officers not wanting to get it wrong.

The assessment of current risk and prediction of future risk categorises the victim as either "standard, medium or high risk". This categorisation of the mother informs the referrals onto specific support services, for example to the MARAC and the support of an IDVA. Officers are tasked with determining the needs of a victim of domestic abuse, at the scene of an incident which could be highly charged, emotional and chaotic. The 2015 HMIC report encouraged categorisation of the victim by risk level, however their concern was that:

"Victims who have not been correctly identified as high risk are in danger of not being offered the appropriate safeguarding services."¹¹⁸

Wiener acknowledges that because of the need to ration finite police resources, risk assessing is a "necessary evil,"¹¹⁹ although as Inspector P3 contemplated:

"The high-risk DAs are looked at through MARAC and goodness knows what else. But I'm sure there's a gap

¹¹⁸ HMIC, above n 5 p.14

¹¹⁹ Wiener, above n 22 p.504

somewhere... We do high risk ok, but we've got a long way to go."

A review of 30 Domestic Homicide Reviews (DHRs) in London found that some of the homicide victims had been assessed as medium or standard risk and remained below the radar of support services before being murdered.¹²⁰ These findings led to further questions as to whether the cases were incorrectly assessed by officers, whether the tools used to predict risk are flawed, or ultimately whether the mother's access to services should even be dependent upon an assessment of her level of risk.

Officers are expected to be proficient at predicting the mother's risk yet as Hunter, Jacobson and Kirby's study of domestic abuse victims' experiences of the police found, often police first responders were unlikely to get a full account from victims.¹²¹ Medina-Ariza et al.¹²² argue that the police are faced with high expectations at the scene of an incident to assess risk based on a complex set of circumstances, and despite the fact that they are not "trained as clinical psychologists or social workers" they are expected to "deliver the same level of diagnosis and treatment..."¹²³ Robinson et al. identified that some risk factors were either overlooked, or not fully explored by officers. Most notably, they found

¹²⁰ Sharp-Jeffs, N and Kelly, L *Domestic Homicide Review (DHR) Case Analysis: Report for Standing Together* (2016) p.7

¹²¹ Hunter, G, Jacobson, J and Kirby, A *Victims of Domestic Abuse: Experiences of the Police* (2015)

¹²² Medina Ariza, Juan Jose, Robinson, Amanda and Myhill, Andy "Cheaper, Faster, Better: Expectations and Achievements in Police Risk Assessment of Domestic Abuse" *Policing* 90 (4) (2016) pp.341-350

¹²³ *Ibid* p.342

that indicators of coercive control fell into this category.¹²⁴ Thornton raises the issue that the tools used for risk assessing were introduced without being evaluated, which she argues “raises basic questions about the accuracy and reliability of the forecast produced by the risk assessment.”¹²⁵ It has also been found that these tools obscure patterns of coercive control.¹²⁶ Myhill and Hohl claim that coercive control should be highlighted as the “golden thread” running through risk identification and assessment. By utilising risk assessment tools which are structured around coercive control, the police could move beyond the “incident to incident” response, and work towards identifying the dangerous patterns of behaviour which do precede domestic homicide.¹²⁷ Monckton et al. argue that the three indicators of previous violence by the abuser, separation from the abuser and the victim’s perception of the risk, are sufficient for predicting the risk of harm.¹²⁸ Stark further simplifies an assessment of risk by reasoning that “the level of control an offender is exercising is a far better way to ration scarce police resources than the level of violence.”¹²⁹ Robinson et al. caution that police officers still do not rank the victim’s fear as highly important when assessing their risk.¹³⁰ Finally, the allocation of support services based upon a categorisation of

¹²⁴ Robinson, A, Myhill, A and Wire, J “Practitioner (Mis)Understandings of Coercive Control in England and Wales” *Criminology and Criminal Justice* 18 (1) (2018) p.38

¹²⁵ Thornton, S “Police Attempts to Predict Domestic Murder and Serious Assaults: Is Early Warning Possible Yet?” *Journal of Evidence Based Policing* 1 (2017) p.66

¹²⁶ Stark, E “The Dangers of Dangerousness Assessment” *Family and Intimate Partner Violence Quarterly* 6 (2) (2013) pp:13-22

¹²⁷ Myhill, A and Hohl, K “The Golden Thread: Coercive Control and Risk Assessment for Domestic Violence” *Journal of Interpersonal Violence* (2016) pp.1-12

¹²⁸ Monckton-Smith et al. above n 85 pp.58-60

¹²⁹ Stark, E “Looking Beyond Domestic Violence: Policing Coercive Control in the United Kingdom” *Family and Intimate Partner Violence Quarterly* 8 (4) (2012) p.202

¹³⁰ Robinson, A, Pinchevsky, G and Guthrie, J “A Small Constellation: Risk Factors Informing Police Perceptions of Domestic Abuse” *Policing and Society* 28 (2) (2016) p.200

the mother places her in a compromised position. She is reliant on the officers' expert assessment of her situation, yet often even she will not recognise the risk she may be facing from her abuser.

As has already been discussed at various points throughout this thesis, both juridical power and biopower are present throughout the MARAC process. In a similar way that the IDVA attends the MARAC as an expert on the mother, the police attend the MARAC as experts on the abuser. The police have the additional force of juridical power underscoring their involvement in the MARAC which raises their status in the multi-agency setting. Reeves claims that all attendees at MARAC are regarded as experts in their own field and police are regarded as the experts in offender management,¹³¹ which affords them a greater status as they have the ability to take actions restricting perpetrators' liberty. There are hierarchies of experts within the MARAC process, and the police sit at the top.

The DVDS was introduced to reduce repeat domestic abuse offending,¹³² and is an example of juridical power and biopower working in tandem. Following completion of the pilots the Home Office cited the saving to public services as an incentive for its introduction.¹³³ The disclosures are of criminal offences and the police are responsible for sharing the information. The scheme can enable a victim, or potential victim, to utilise the power of the law to potentially protect them from future harm. The involvement of professionals in deciding whether information should be shared, especially in the RtA route, places the applicant in

¹³¹ Reeves, above n 79 p.41

¹³² Home Office *Domestic Violence Disclosure Pilots: Impact Assessment* (2011) p.1

¹³³ *ibid* p.5

a position where they are reliant on a panel of experts to decide what they are entitled to know about their partner. When given the information, a person is expected to behave in a specific way by ending the relationship.¹³⁴ This is despite widespread recognition that separation increases a victim's risk of harm.¹³⁵ Neither does it take into account the complexities of personal relationships and the manipulative abilities of a domestic abuse perpetrator to encourage the relationship to continue despite the disclosure. The conundrum which the victim may find herself in when presented with information about her partner's criminal history is compounded by the fact that she is not permitted to share this information with him or anyone else.¹³⁶ Duggan calls attention to the Home Office's lack of reporting on outcomes following disclosures.¹³⁷ The Home Office have instead concentrated on documenting the numbers of applications and disclosures,¹³⁸ which raises a question of whether the disclosures have fulfilled their purpose of reducing domestic abuse incidents. A further question to be asked is exactly how a disclosure scheme is supposed to reduce incidents of domestic abuse. Is it intended that once women know that their partner has a tendency towards violence they will be more careful not to "provoke" abuse? Or is the intention that the woman ends the relationship, and her ex-partner does not continue his abuse of her post-separation, nor does he enter into a new relationship where he will behave abusively? Or, is it the intention of this policy

¹³⁴ Duggan, above n 34 p.213

¹³⁵ Hester, M "The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence" *British Journal of Social Work* (2011) (41) p.843

¹³⁶ Home Office *Domestic Violence Disclosure Scheme (DVDS) Guidance* (2016) p.20

¹³⁷ Duggan, above n 34 p.215

¹³⁸ Home Office *Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment* (2013) p.3

that the onus is placed upon women to apply for information on every prospective partner, and therefore men who have criminal records for abusive behaviours never enter a new relationship?

In summary, the police response to domestic abuse has certain biopolitical aims, which are intended to reduce incidents of domestic abuse which in turn reduces the cost of domestic abuse on statutory services, and specifically on police forces. Police officers are expected to respond to domestic abuse incidents in a specialised way and exercise an expertise which includes categorising the mother. This categorisation directly affects the ongoing specialist support offered to the mother.

5.4.2.3 Gender

As discussed in detail in earlier chapters, gender is nested in the private family setting where the relationship between the mother and the police exists. The relationship between the mother and the police also contains gendered forces, due to the mother's involvement with the police as a woman. There is a "striking and consistent" pattern of low numbers of female suspects or offenders at all stages of the criminal justice process.¹³⁹ Being a victim of domestic abuse is therefore one of the key avenues through which women encounter the police.¹⁴⁰ Additionally, as discussed in previous chapters, domestic abuse is a gendered crime. In 2016, 44 percent of female homicide victims were killed by a partner or

¹³⁹ Heidensohn, F and Gelsthorpe, F "Gender and Crime" in Maguire, M, Morgan, R and Reiner, R *The Oxford Handbook of Criminology* (2007) pp.381-420

¹⁴⁰ Loftus, B *Police Culture in a Changing World* (2009) p.128

ex-partner, compared with 7 percent of male victims.¹⁴¹ A 2013 study by Hester found that men are significantly more likely to be repeat perpetrators, with 83 percent of male perpetrators having at least two, and often many more, incidents of recorded abuse.¹⁴² Comparatively, 62 percent of female perpetrators had only one incident of abuse recorded. As also discussed in earlier chapters, there is an expectation throughout society of the inevitability of male violence.¹⁴³ As Reiner observes:

“Danger is seen as coming from a male stranger not a spouse: when women take elaborate security precautions to safeguard their homes they are often locking themselves in with the most likely source of violence against themselves.”¹⁴⁴

Although policing itself has changed over time, it has “universal, stable and lasting features.”¹⁴⁵ For example, despite positive action initiatives being introduced for responding to domestic abuse, “police behaviours have changed [but] accepted ways of thinking have persisted.”¹⁴⁶ These general behaviours and mindsets of police officers are referred to as police culture, which is dominated by “old-

¹⁴¹ Office for National Statistics *Crime Statistics, Focus on Violent Crime and Sexual Offences, Year ending March 2016* (February 2017)

¹⁴² Hester, M, “Who Does What to Whom? Gender and Domestic Violence Perpetrators in English Police Records” *European Journal of Criminology* 10 (2013) pp. 627 – 628

¹⁴³ Stanko, E *Intimate Intrusions: Women’s Experience of Male Violence* (1985) p.9

¹⁴⁴ Reiner, R *Law and Order: An Honest Citizens Guide to Crime and Control* (2007) p.40

¹⁴⁵ Skolnick, J “Enduring Issues of Police Culture and Demographics” *Policing and Society* 18 (1) (2008) p.35

¹⁴⁶ Loftus, above n 140 p.133

fashioned machismo”¹⁴⁷ and the exercise of authority and power.¹⁴⁸ As Reiner states, “The police world remains aggressively a man’s world.”¹⁴⁹ Police culture has traditionally been recognised as including an exaggerated sense of mission towards the police role, engrained suspicion towards anyone challenging the status quo and a willingness to use force and engage in informal working practices.¹⁵⁰ Loftus argues that this view is now somewhat clichéd and based on research from as long ago as 1966.¹⁵¹ However, in her study of police culture she found that “the construction of domestic violence incidents as rubbish, low status work reflected the persistence of the masculine ethos.”¹⁵² In line with earlier research by Edwards,¹⁵³ the officers in Loftus’ study held stereotypical assumptions about conventional gender roles, behaviour and family ideologies when attending domestic abuse incidents. Loftus established that “domestic violence incidents continue to be informed by masculine sentiments.”¹⁵⁴ Andy Myhill’s study of police decision making when responding to domestic abuse found some male officers continued to privilege the male abuser’s account.¹⁵⁵ Positive action initiatives place a high expectation on officers to record key information relating to a case to enable ongoing risk assessments, safety planning and allocation of support services. Loftus found in her study that a “particularly

¹⁴⁷ Fielding, N “Cop Canteen Culture” in Newburn, T and Stanko, E *Just Boys Doing Business? Men, Masculinities and Crime* (1994) p.52

¹⁴⁸ Smith, D and Gray, J *The Police and People in London* (1985) p.87

¹⁴⁹ Reiner, R *Politics of the Police* (4th Eds) (2010) p.138

¹⁵⁰ Reiner, R *The Politics of the Police* (2000) pp.87-101

¹⁵¹ Loftus, above n 140 p.ix

¹⁵² *Ibid* p.130

¹⁵³ Edwards, above n 81

¹⁵⁴ Loftus, above n 140 p.130

¹⁵⁵ Myhill, A “Renegotiating Domestic Violence: Police Attitudes and Decisions Concerning Arrest” *Policing and Society* (2017) pp.1-17

male way of viewing the situation interfered with the quality of service afforded to the victim.”¹⁵⁶

In March 2017, 29 percent of police officers in England and Wales were female.¹⁵⁷ Thirty-one percent of Constables were female, however the proportion of females holding more senior ranks was lower, females making up only 21 percent of Inspectors.¹⁵⁸ Many commentators have argued that the need to increase the number of policewomen, especially in higher ranks, is important not only as an issue of equality but to dilute the machismo element in police culture.¹⁵⁹ Silvestri claims that much has been done to reshape the working practices of policing to encourage more female participation.¹⁶⁰ Yet, she laments that to date, “police leadership remains the preserve of white men”¹⁶¹ and calls for greater attention to be paid to the cultural and structural conditions that enable the “heroic male” to emerge as the “ideal” police leader. Heidensohn argues that the lack of female representation throughout police agencies feeds into the overwhelming masculinity of police culture, whilst also diminishing the legitimacy of the police with women, as the police force does not represent them.¹⁶² She goes on to state that:

¹⁵⁶ Loftus, above n 140 p.132

¹⁵⁷ House of Commons *House of Commons Library: Social Indicator 2615* (November 2017) Available <researchbriefings.files.parliament.uk/documents/SN02615/SN02615.pdf>

¹⁵⁸ House of Commons *Police Service Strength: Briefing Paper Number 00634* (23rd March 2018) pp.9-10

¹⁵⁹ Reiner, above n 150 p.173

¹⁶⁰ Silvestri, M “Gender Diversity: A Hop, Skip and Jump Forwards and Back” *Policing: A Journal of Policy and Practice* 9 (2015) pp.56-64

¹⁶¹ Silvestri, M “Disrupting the ‘Heroic’ Male Within Policing; A Case of Direct Entry” *Feminist Criminology* 13 (3) (2018) p.2

¹⁶² Heidensohn, F “Women in Control” in Newburn, T (eds) *Policing: Key Readings* (2005) p.756

“There are no rational reasons why men should dominate policing... Since they are themselves the sex more likely to be involved in delinquency and crime there are good *a priori* grounds for *not* preferring them.”¹⁶³

She maintains that if the police forces of the 21st century could become more gender neutral, they may be far less macho in culture.¹⁶⁴

In the past, specific roles have been allocated to female officers which were deemed suited to their gender. The task of caring for female victims was seen to be more suitable work for female officers, as opposed to the masculine pursuits of “action orientation” and “crime fighting” deemed as “real policework.”¹⁶⁵ In the 1990s, when the majority of police forces operated specialist domestic abuse units,¹⁶⁶ there was a propensity for officers in these units to be female.¹⁶⁷ McCarthy argues that “in contemporary divisions of labour within the police organisations...there is still strong evidence to suggest that female officers tend to occupy positions linked to social service operations.”¹⁶⁸ He describes multi-agency work as “soft-policing.” Although he maintains that male and female officers both conduct soft policing, it is the female officers who show “genuine support for delivering these functions.”¹⁶⁹ However, from my small study, despite there not being any interview questions explicitly asking about gender, the mothers

¹⁶³ *ibid* p.757

¹⁶⁴ *ibid* p.758

¹⁶⁵ *Ibid*

¹⁶⁶ Home Office Circular 60/1990

¹⁶⁷ Westmarland, L *Gender and Policing* (2001) p.24

¹⁶⁸ McCarthy, D J “Gendering ‘Soft’ Policing: Multi-Agency Working, Female Cops, and the Fluidities of Police Culture/s” *Policing and Society* 23 (2) (2013) p.265

¹⁶⁹ *ibid* p.275

described situations where their involvement with female officers was negative.

For example, M3 told me that;

“There was one occasion, I remembered, it was a woman,
and they do tend to take the men’s side I have noticed,
especially if they’re a bit of a charmer, which mine was.”

The mothers also perceived some of the female officers as judging them as “bad mothers” for exposing their children to the abuse. This is consistent with McCarthy’s study where he observed female officers placing judgement on the “respectability” of mothers, whom they viewed as “failing” in “their duties to both act responsibly as a woman and as a supervisor of [their] children.”¹⁷⁰ Also, the 2015 HMIC report found that “the victim’s parenting skills are held up to question making them feel further to blame for the domestic violence they’ve experienced.”¹⁷¹ Some female victims in the HMIC focus groups also felt that:

“lack of empathy and understanding [was] more prevalent
among female officers. They described female officers as
displaying judgemental attitudes and not showing
compassion.”¹⁷²

Upon examination of the mothers’ police files it was evident that male and female officers were equally judgemental about the mothers’ ability to protect their

¹⁷⁰ McCarthy, above n 168 p.263

¹⁷¹ HMIC above n 6 p.43

¹⁷² *ibid* p.44

children from the fathers' abuse. However, the mothers appeared to have responded more acutely when it came from another female.

When responding to incidents of domestic abuse officers are directed by the Home Office to take account of gender and "any vulnerabilities" but to avoid making assumptions based on stereotypes.¹⁷³ The status of women as victims of domestic abuse is problematic in the United Kingdom, as there continue to be two competing models for understanding violence against women and girls (VAWG). The first is the global VAWG framework which identifies that abuse is suffered by women by virtue of the fact that they are women.¹⁷⁴ In contrast, the cross-government definition of domestic abuse frames domestic abuse as gender neutral. As discussed in previous chapters, gendered norms exacerbate the coercive behaviours of the abuser, rendering the abuse as invisible. As Tolmie argues, "women's traditionally devalued status...can make a victim's oppression difficult to see."¹⁷⁵ The expectation is on police to respond sensitively, and with insight, to the gendered norms which are present within the private family setting. However, police officers have traditionally viewed women with a "conventional bigotry – as wives or whores."¹⁷⁶ Loftus argues that:

"Victims of domestic abuse are invariably defined according to a set of stereotypical assumptions about their femininity which, in turn, relates to their deservedness as

¹⁷³ Home Office *Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework* (2015) p.24

¹⁷⁴ Monckton-Smith et al. above n 85 p.17

¹⁷⁵ Tolmie, above n 109 p.56

¹⁷⁶ Reiner, above n 149 p.172

recipients of police protection...the perceived moral character of the victim [interferes] with the degree of sympathy and professionalism displayed by the officers.”¹⁷⁷

If the victim is viewed by the officers as being “rough” or if she has a history of being a victim of abuse, the officers’ response is particularly deficient.¹⁷⁸ In a study by Stanko, the police responded positively to female victims who conformed to established norms of respectable and acceptable female behaviour, as they considered them to be credible and respectable witnesses.¹⁷⁹ Monckton-Smith et al. claim that women who are perceived as weak or reckless will lose status with the police, as do women who “do not leave” and are deemed to be causing their own problems by remaining in the relationship.¹⁸⁰ The police response to domestic abuse exists in a hierarchy, with physical violence and serious injury sitting at the top. Female victims of male violence also exist in a hierarchy with women who are killed by a male stranger sitting at the top. Monckton-Smith et al. argue that the more intimate the murdered woman is with her killer, the lower down the hierarchy she sits.¹⁸¹ Being married to and continuing to cohabit with her killer gives the woman the least status, in both cultural and criminal justice terms.¹⁸²

¹⁷⁷ Loftus, above n 140 p.132

¹⁷⁸ *Ibid*

¹⁷⁹ Stanko, above n 143 p.116

¹⁸⁰ Monckton-Smith et al. above n 85 p.22

¹⁸¹ Monckton-Smith, J *Relating Rape and Murder: Narratives of Sex, Death and Gender* (2010) and Monckton-Smith, J *Murder, Gender and the Media; Narratives of Dangerous Love* (2012)

¹⁸² Monckton-Smith et al. above n 85 p.21

The mothers I spoke to all had some experience of their partner or ex-partner reporting them to the police as a means to exert control. M2's husband called the police to report her being intoxicated. M5's ex-partner reported her to the police after he confronted her in the street, and she pushed him in self-defence. M7's ex-partner maliciously utilised the police during family law proceedings, which is discussed in the next chapter. M9's ex-partner made repeated malicious calls to police regarding her care of their child. Aside from M9 who had been involved with the police during her relationship with her ex-partner, all of the above calls were made before the mothers had felt ready to contact the police for assistance themselves. It is interesting to note that the male abusers appeared more willing to utilise the juridical power of the police to control their partners than the mothers were prepared to utilise the same power to protect themselves. This is consistent with the use of juridical power by the abusers in the social work and family law relationships.

In summary, the forces present in the setting structure the mother as largely insignificant in the relationship with the police, whilst also placing her at the mercy of the officers' ability to utilise juridical power to protect her and to utilise biopower to categorise her in a way which enables specialist support to be provided.

5.4.3 Policing Practices

As has been mentioned previously, police officers are expected to respond in a specialised way to incidents of domestic abuse.

“The response officer must...protect the victim from further harm, gain their trust and confidence, and assess what level of risk they face in order to keep them safe in the future. This is a complex task.”¹⁸³

There is an expectation on response officers to deal with more than just the obvious crimes of violence or criminal damage, which can lead to officers perceiving domestic abuse to be outside of their “professional skillset.”¹⁸⁴ Officers in Wiener’s study describe “typical, normal, policing” as when they, “turn up, we deal with the violence, and we move on.”¹⁸⁵ As Inspector P3 explained, “[police] now look at risk and harm as [their] biggest drivers for business and domestic abuse is one of the biggest drivers around risk and harm.” Medina Ariza et al. argue that “the narrative around risk in forces remains largely one of physical violence.”¹⁸⁶ Yet, when answering domestic abuse calls officers are often expected to identify, and protect the mother from, something invisible. This is in conflict with the working model of responding to obvious risk and immediate danger. There is a discrepancy between what is expected of the police when responding to domestic abuse calls, and how they respond in practice, as Tolmie claims, “the criminal justice system was not designed to address intimate partner violence.”¹⁸⁷ Loftus found that the police in her study “integrated the directive to arrest into their practice”, however “within the occupational consciousness “domestics”

¹⁸³ HMIC above n 5 p.47

¹⁸⁴ Monckton-Smith et al. above n 85 p.61

¹⁸⁵ Wiener, above n 22 p.503

¹⁸⁶ Medina Ariza, Robinson and Myhill, above n 122 p.345

¹⁸⁷ Tolmie, above n 175 p.51

were still considered to be troublesome and unimportant.”¹⁸⁸ Officers expressed their frustration that domestic incidents were stopping them from dealing with “burglars, rapists and dealers”¹⁸⁹ and described themselves as referees as opposed to criminal justice professionals dealing with legitimate crime.¹⁹⁰ In Myhill’s study officers felt that the:

“Pendulum had swung the other way, and that the wide-ranging definition of domestic violence to which they worked, coupled with the ‘positive action’ policies, meant they were required to intervene in disputes that were not worthy of a police response.”¹⁹¹

These underlying attitudes are just one “ingredient” in the formation of “working assumptions” that influence officers’ behaviour.¹⁹² They are also influenced by societal norms, legislation, policies and force-wide cultures. The 2014 HMIC report recognises that officers are under pressure to “deal with incidents as rapidly as possible” and face a “range of different incidents on the same shift” that require different levels of empathy. In addition, officers also:

“carry personal views and bias (often reinforced by their experiences as police officers or indeed in their own personal lives and by the views of their colleagues) that

¹⁸⁸ Loftus, above n 140 p.128

¹⁸⁹ *ibid* p.129

¹⁹⁰ *Ibid* p.130

¹⁹¹ Myhill, above n 113 p.8

¹⁹² *ibid* p.3

they bring to these incidents, which can have an impact on their approach and attitudes.”¹⁹³

The mothers’ relationships with the police were shaped by the “working assumptions” of the police officers who they came into contact with and resulted in a range of experiences which will be presented in the following sections as police “practices”.

5.4.3.1 Knowledge

The HMIC reports found that officers’ lack of domestic abuse knowledge was a common theme throughout police forces. The 2014 report states that:

“A proper understanding of domestic abuse, and an appreciation of the harm it causes to victims and their children, is essential if officers are to carry out effectively their core policing activities of keeping victims safe, preventing crime, investigating crime and bringing offenders to justice.”¹⁹⁴

Yet it was found that, “officers lacked in the skills and knowledge necessary to engage confidently and competently with victims of domestic abuse.”¹⁹⁵ The report claimed that the “current approach to training, which is largely reliant on e-learning, is failing to address this issue.”¹⁹⁶ This was echoed in my study, for example Constable P1 spoke about the nature of the training that she had

¹⁹³ HMIC, above n 5 p.47

¹⁹⁴ *ibid* p.8

¹⁹⁵ *Ibid* p.7

¹⁹⁶ *Ibid* p.9

experienced: “they feed down new legislation through either powerpoint presentations or e-learning programmes,” whilst Inspector P3 fully acknowledged that, “one electronic training package doesn’t give you the full story.” The 2015 HMIC report found that:

“Some response officers still exhibited a lack of knowledge, understanding and appreciation of the dynamics of domestic abuse, particularly in relation to coercive control.”¹⁹⁷

The report understood that officers are expected to have a “broad range of knowledge and understanding” of many crime types to perform their role, however:

“The fact that domestic abuse accounts for 33 percent of all recorded assault with injury crimes and 10 percent of total crime means having a good understanding of domestic abuse and how to respond to this should be a priority for forces.”¹⁹⁸

Monckton-Smith et al. argue that as long as police officers continue to be trained by police personnel, they will continue to approach domestic abuse from a police perspective and not that of the victim.¹⁹⁹ The lack of knowledge is in contrast to the high expectations on police officers to respond to domestic abuse effectively

¹⁹⁷ HMIC, above n 6 p.46

¹⁹⁸ *ibid*

¹⁹⁹ Monckton- Smith et al. above n 85 p.155

in order to reduce repeat cases. Detective Inspector P2 explained that officers could no longer:

“go to a domestic abuse incident and say, ‘oh I’m sorry this just isn’t a crime’, you have to start looking more deeply.”

This expectation, to work harder at identifying a crime whilst at the scene, was felt by the Constable I spoke to, who told me:

“At that initial attendance there’s so much to do, especially if you’re taking a prisoner away – you want to take them away as soon as possible but you also have to gather as much evidence that might be lost... You can’t keep someone waiting there, and it also puts the victim under more stress if the perpetrator is still there.”

Detective Inspector P2 explained how responding to victims of domestic abuse was more complex than responding to many other crime types:

“there are things we can do obviously, but it relies on [the victim’s] cooperation, it relies on us seeing things for what they are, it relies on us working with partners, time consuming work.”

The mothers’ perception was that the police were not knowledgeable, or even interested, enough to respond accordingly to their needs. As M4 clearly stated:

“I think some [officers] need to learn more about domestic abuse, in my opinion, because they don’t realise how scared women actually get.”

The needs of victims of abuse are complex and without knowledge of the intricacies of abuse within the home, the police cannot properly respond to the victim’s needs. Throughout all of the police files there was heavy use of the word “argued” and phrases such as “there has been domestic abuse *between* [mother and abuser]” which suggest that the behaviours are of a mutual nature. This indicates a possible lack of understanding of the power dynamics of coercive control, where the abused mother is unlikely to be involved in a mutual “argument” and the abusive behaviour is directed by the perpetrator towards the mother. An example of a concerning lack of understanding of abused mothers was identified in M2’s police file, where it was recorded that:

“There is a history of DA by husband to [M2] which she is known to minimise and fails to support prosecution... Daughter is subject to a CP plan with social services, owing to DA and concerns of [M2] failing to safeguard her daughter, along with failing to engage with services.... There has been IDVA intervention due to the CP plan but it clearly does not appear M2 has been adhering to concerns...owing to [M2’s] failure to engage and honesty with services. I believe this to be raised at MARAC...”

This statement was written by a detective constable who was situated in the specialist domestic abuse team. She barely mentions the abuser and appears to apportion blame on the mother for failing to end the relationship.

Although the legislation criminalising coercive and controlling behaviour was only introduced during the latter part of my research, coercive control has formed part of the policy definition of domestic abuse since 2013. However, the “violence model” continues to be the dominant model of domestic abuse recognised by professionals, including police. This model is predicated on the physical violence the victim is subjected to and the view that the severity of the violence is the main indicator of harm.²⁰⁰ As Bettinson and Bishop explain:

“The criminal justice system fragments longstanding patterns of domestic abuse into separate offences...each incident is taken out of the pattern in which it occurs and is responded to in isolation.”²⁰¹

Tolmie argues that:

“Interpersonal violence offences are constructed primarily in terms of incidents... The totality and meaning of the perpetrator’s behaviour, the continuing risk he poses, and the weight of harm experienced by the victim are all

²⁰⁰ Stark, E *Coercive Control: How Men Entrap Women in Personal Life* (2007) p.12

²⁰¹ Bettinson, V and Bishop, C “Is the Creation of a Discrete Offence of Coercive Control Necessary to combat Domestic Violence?” *Northern Ireland Law Quarterly* 66 (2) (2015) p.179-197

potentially misunderstood and minimized at each stage of the criminal justice process.”²⁰²

At the time of my study, officers should have already been attempting to identify patterns of behaviour to inform their practice. However, the mothers throughout the study experienced police officers approaching domestic abuse as isolated incidents and not as a course of conduct, or needing to be understood within the context of their wider relationships.

M3 had called police because her partner had deliberately injured himself. The police files state that he had “purely hit his head with an ashtray to express his feelings to his partner.” These feelings were that he was frustrated because she had been sick in bed all day. She was nine months pregnant and he wasn’t getting any attention. The officer appeared to sympathise with this controlling behaviour and rationalised it in his notes. M3’s paperwork indicates that although she told the police that her partner was mentally unwell, and he himself indicated that his state of mind was such that he thought it appropriate to hit himself in the head with an ashtray, the police did not deem this to be a risk factor for M3. There appeared to be a lack of understanding by police of how her pregnancy and ill health, along with her partner’s controlling behaviour and mental health issues, would indicate a high risk of harm to M3. They appeared to take on face value what they were being presented with, which was a vulnerable man whose wife was unable to give him the attention he needed so he self-harmed to get that attention. This was despite the presence of a marker on M3’s files stating, “long

²⁰² Tolmie, above n 175 p.51

history of domestic violence at this address.” Taken in the context of the various “low level” incidents recorded in the police files prior to this incident, this indicates a potential lack of knowledge of the power dynamics of domestic abuse.

Another call was made by M3 to the police asking for assistance as her partner had attempted to rape her. The “call type” was downgraded by the duty Sergeant from urgent to non-urgent, the reason given for this being that “M3 was not raped, it’s part of the domestic abuse she is suffering.” Officers attended her home three hours later. The day to day terror that M3 was living with was not taken into account by the police. An officer in Wiener’s study explained that:

“If it’s an assault, or a criminal damage, there’s an event, whereas obviously with coercive control you are telling a narrative, a story – that’s always going to be more difficult.”²⁰³

M4 received a very proactive response from police when she made her first call to them. The call was abandoned, and records show that the operator had heard a female crying. They sought, and were granted, permission to check the subscriber of the mobile phone which had been used to make the call. The phone was unregistered, so they called it back and were able to gain the locality of the GPS signal. A search warrant was granted, justified due to a “possible risk to life.” Officers knocked on doors around the area of the GPS signal but were unable to identify the victim. A Sergeant recorded the request for “a more concerted effort

²⁰³ Wiener, above n 22 p.505

to raise someone” and eventually through calls to numbers linked to the original phone the police managed to contact M4’s mother. She was able to contact M4 and established that she was not hurt. The police followed up for many hours, until M4 was safely with her family and was able to speak to police and assure them that she was unharmed. This example illustrates a positive response to a single incident, which was assessed as being a “risk to life.” However, this was the most proactive response M4 received from the police throughout her involvement with them. It would appear from her police files, and from the interviews with both her and her social worker, that each time M4 called police subsequently their response was less proactive. This indicates a diminishing concern for her wellbeing each time she returned to the relationship. It also potentially illustrates the lack of police understanding of the ongoing coercive nature of domestic abuse, even after the relationship has ended.

M9’s involvement with the police had a different focus as her ex-partner was the informant the majority of the time. The paperwork I obtained was limited, as her involvement with police had mostly been outside the area of my study and I had not obtained her consent to access paperwork from where she had previously lived. The evidence from the police files I managed to access indicated that the police were aware of the malicious nature of her ex-partner’s reports. She told me that “the police were actually the fairest out of them all” and that they had given her advice “off the record” about how to deal with him. A note in her police files states that “there is absolutely no information anywhere that is consistent with that which the informant has said to me on the phone.” However, it is

questionable whether the officers identified the ongoing issues with M9's ex-partner as being domestic abuse, as they did not complete a risk assessment with her or refer her to the local domestic abuse service contrary to their domestic abuse policy at the time.

Examination of the mothers' police files indicated that day-to-day behaviours which could amount to coercive control seemed to be overlooked by officers and appeared to be recorded as "secondary incidents" (SIs), "no-crime" or "verbal only" incidents. An SI relates to an incident that does not fit the criteria of a crime. The police document the incident for intelligence purposes and it can be reclassified at a later date. Myhill and Johnson found that officers did not identify individual incidents in the context of coercive control, which meant that a proportion of calls to the police were not even recorded as domestic abuse.²⁰⁴ It was evident from the files that some of the SIs recorded involved behaviours which should have been recognised as criminal offences. For example, the second and third occasions when officers attended M2's home it is recorded that she disclosed threats to kill, which she believed her husband was capable of carrying out. These were both recorded as "verbal only" incidents and no further action was taken. Another call detailed that her husband had deliberately smashed a glass and then "jabbed" a mop in their daughter's face. This was also recorded as an SI. In M3's police files there were "verbal only" incidents recorded for times when her partner threatened to harm her and himself; most of these were during the early hours of the morning when he would return to the home intoxicated.

²⁰⁴ Myhill and Johnson, above n 53

The incident where he harmed himself with an ashtray for attention was also recorded as a “verbal only” and no further action was taken. M3’s ninth call to the police is recorded as an SI with the comment:

“It would appear a combination of money troubles, unemployment and a small child have raised tensions in the house.”

M4 had nine SIs recorded in her paperwork, these included incidents where her ex-partner has broken into her home, criminal damage of the interior of her property and of her mobile phone. Each of these incidents occurred whilst he was on bail with conditions not to go to M4’s property.

All of these incidents occurred whilst a positive action policy was in place. Officers appeared to have used their discretion to record these incidents as SIs rather than to arrest the abuser. Myhill and Johnson conducted a study to consider how the discretion of individual officers influenced how they constructed incidents as domestic abuse, or otherwise, and as criminal offences, or otherwise. They found that officers used considerable discretion when responding to domestic abuse, along with a lack of thorough investigation of some current and historic reports.²⁰⁵ HMIC have suggested that officers require “greater discretion” in order to ensure their response is “targeted” to the domestic abuse victim’s needs.²⁰⁶ But as Sumner explains, “to make something into a crime requires work”²⁰⁷ and when discretion is used by officers to “no crime” reports to reduce their workload, or

²⁰⁵ Myhill and Johnson above n 53 p.14

²⁰⁶ HMIC above n 5 p.37

²⁰⁷ Sumner, C *The Sociology of Deviance: An Obituary* (1994) p.218

because they are “sceptical of the victim’s account”,²⁰⁸ the use of discretion is problematic.

5.4.3.2 Consistency

From the case studies it was clear that contrary to policy N07 which requires that police respond consistently to all victims of domestic abuse and ensure that they receive appropriate quality of services,²⁰⁹ the mothers experienced inconsistent police responses. The 2014 HMIC report found that many women had experienced positive attitudes amongst officers responding to the incidents, however they also found that:

“the majority had experienced very poor attitudes from responding officers. Victims told us they were frequently not taken seriously, (and) that they felt judged...”²¹⁰

Similarly, the study by Hunter et al. which was conducting during the same time period as my study, identified an inconsistency of response from the various officers the study’s participants had been involved with.²¹¹ The mothers in my study reported some positive experience with officers, for example M7 was impressed with the DVDS scheme which she applied to for information in respect of a new relationship. These mothers also told me that:

²⁰⁸ Myhill and Johnson above n 53 p.14

²⁰⁹ Kent Police *Policy N07* June 2015 S.2.3

²¹⁰ HMIC, above n 5 pp.11-12

²¹¹ Hunter et al. above n 121 p.15

“[The police have] always been good to me, as far as I’m concerned.” (M2)

“I’ve had very good experiences with them, as I say I’ve always felt believed and all the rest of it...” (M3)

“Some police are like very sympathetic and really nice...”
(M4)

“They was trying to help me...they was nice to me, like they was talking to me, making sure I was feeling safe.” (M5)

“[the officer was] absolutely lovely, they all understand.”
(M7)

“I think they’re very fair, I think they’re very understanding.” (M9)

However, the majority of the mothers also had negative experiences of individual officers. This was especially true of those who had protracted involvement with police. M4 described the inconsistency of the response she received when she called the police, telling me that, “it depends who it is...it’s rarely that you get someone who’s like willing to help and support you with everything.” The 2014 HMIC report found that:

“the quality of the service that a victim receives is entirely dependent on the empathy, understanding and commitment of the individual involved... [The] attitude of

the attending officer is vital, to inspire trust and confidence
in the victim.”²¹²

This was corroborated in the 2015 report which stated that:

“We found that officer attitudes to victims are still mixed;
some response officers fail to understand and appreciate
the dynamics of abuse.”²¹³

The mothers’ uncertainty about what response they will receive from police can lead to a lack of trust in the police, which in turn reduces their options to access the law to protect themselves. The mother may find it hard to make her own plans if she cannot rely on the actions of those who are meant to be protecting her. Three mothers indicated to me that they had chosen not to call police on occasions because of the police response they had previously experienced. M2 explained that she had wanted to drop charges after one of the specialist domestic abuse officers spoke to her in a very judgemental way. M3 also decided it was safer for her to drop the charges against her ex-partner when she was left without information following a lack of communication and updates from officers. The mother is unlikely to act autonomously and report the abuser, provide a statement and support a prosecution based upon this ever-changing response from the police. Although the positive practices of *some* first responders to the victim would promote her autonomy and therefore mitigate the structuring forces, the lack of

²¹² HMIC, above n 5 p.11

²¹³ HMIC, above n 6 p.42

consistency in initial responses overall continues to negate the mother's ability to exercise her autonomy by choosing to call the police.

Consistency of response could be linked to officers' level of knowledge, specifically of the invisible, coercive element of domestic abuse. In M4's case the lack of knowledge of coercive control as enduring, even after separation, is evident. M4 was a young mother living alone and her abusive ex-partner was the father of her young child. The following note was recorded in her police file:

"This whole case, involving five crimes...are [no further action] [due to] the victim's credibility. A view of the suspects phone shows victim has been instigating contact with [ex-partner] and meeting with him...this undermines her and the [non-molestation order]. It may be that events get out of hand when they get together as in the case of the criminal damage...the couple will undoubtedly be left as high risk but with her continued disregard for her own safety...there is little more the police can do at this stage...the victim's credibility is a fatal flaw to being believed."

The impression here is that if M4 chooses to spend time with her ex-partner then she is potentially consenting to his abusive behaviour. M4 may have wanted the relationship to continue without the abuse; her ex-partner may have said sorry and promised he would change, or she may have felt compelled to encourage a relationship between father and child. When they did meet, and he very quickly

became aggressive, she called the police to protect her. This is what she had been advised to do and as she had not been advised by the police that they no longer recognised her as a credible victim she continued to call them. Following the decision to take no further action on the criminal damage, assault and breaches of bail, M4's subsequent response from the police drastically deteriorated. Consequently, she was left bemused:

"sometimes the police are useless...they look down on me, as if I'm wasting their time and stupid for ringing them up... I called them...and they was just like 'oh and that's why you called us' as in 'you're wasting our time, go away'. [This made me feel] like I didn't want to bother calling the police anymore."

Her social worker elaborated about how she perceived the situation, where the perpetrator was not being actively sought following numerous breaches of his bail conditions and non-molestation order.

"I think from M4's point of view she felt as if... the police...were just not taking it seriously enough. She verbalised this to me, as did her family, they were in just an impossible situation and they felt completely powerless...there did not seem any consequences to his behaviour. I really did feel frustrated, I can imagine how it must have felt for M4 in the middle of this, just to know that she's just not being taken seriously."

The social worker had not been consulted about what the police had found on M4's phone; she was therefore also left unaware of the reason for their shift in response. If the police had communicated with the social worker she could have addressed the police's scepticism with M4, who may have adjusted her expectations of protection from them due to her ongoing contact with her abuser.

The mothers' experiences of police practices are based upon each officer's interpretation of the legislation and policies, which is why the various responses are inconsistent. However, the question remains as to whether it is even possible to ensure consistency of response, as long as the craft of policing is based upon the officers' use of discretion. The use of discretion is necessary for officers to decipher the situation they are presented with at the scene in order to identify domestic abuse. This requirement will only increase with the widening of the definition of domestic abuse.

An area of the police response which has been widely identified as being inconsistent is the practice of risk assessing. As the 2015 HMIC report states:

“There are inconsistencies in when and if a risk assessment is completed, the quality when completed [and] the understanding among response officers of its purpose.”²¹⁴

Although there was a high level of compliance with completing a risk assessment form, some officers saw it as a process rather than:

²¹⁴ HMIC, above n 6 p.61

“An essential part of victim safeguarding [with] the grading of risk still based upon the number of ticks on the DASH form and not on the officer’s professional judgement.”²¹⁵

An example of this can be seen in M2’s crime reports where there are inconsistent risk assessments. This appears to be due to officers assessing each incident in isolation. Within the crime report for the first call to police, the officers stated they could hear M2’s husband shouting as they pulled up, there was food on the floor in the hallway and on the walls. The 11-year-old child was present. She was distressed and had called the police; yet police did not choose to speak to the child and instead took on face value that this was a one-off argument due to “the stress of the couple’s son.” This was the beginning of M2’s protracted involvement with police, yet each time she was responded to on an incident by incident basis. The risk assessments which were completed, each time by a different officer, told very different stories. The risk levels changed every time there was a call out. On more than one occasion her risk level was reduced from high to standard overnight, despite there being very little change to her circumstances. M3’s paperwork also indicated inconsistent risk assessing, especially during the calls to police earlier in her relationship when her partner was presenting as being vulnerable due to mental health issues. M4’s risk levels were determined based solely on her answers to the risk assessment questions and were not taken in the context of her wider relationship with the abuser. This is evident when some of the risk assessments were completed within days of each other, yet the risk levels were

²¹⁵ *ibid* p.63

reduced. As Medina Ariza et al. warn, “an endless combination of misunderstanding, judgement errors and procedural mistakes can occur in the policing of domestic abuse at the front line.”²¹⁶ The scene of a domestic abuse incident may not therefore be the best time to complete a risk assessment. It is especially vital to obtain a true picture of the situation when the level of support offered to the mother is dependent on the risk level. The scene of the crime will be stressful and possibly not the best environment for officers to build rapport, and therefore get a good response from the mother. If the mother does not feel comfortable, she may not disclose the full extent of her situation, which can lead to a risk assessment which is inconsistent with the risk she faces. The National Guidance also recommends that a secondary risk assessment is completed after the incident. There is no evidence that this happened in any of the police files I was able to obtain. However, on numerous occasions a senior officer downgraded the mothers’ risk, without meeting or speaking with them. There are very limited notes in the files explaining the reasons behind these downgrades. The reasons that were given were often contradictory or made little sense. However they may be linked to a desire to reduce the impact of high risk cases on already stretched resources.

Monckton-Smith et al. caution that emergency services are “not geared up to deal with incidents that fall into specific areas of expertise.”²¹⁷ They further add that police officers do not see safety planning beyond the immediate threat and view this extra work as “social work”. Officers are also subject to higher levels of

²¹⁶ Medina Ariza et al. above n 122 p.342

²¹⁷ Monckton- Smith et al. above n 85 p.67

scrutiny when responding to domestic abuse which may affect their assessment of the situation. As P2 explained:

“You have to remember that police officers are nervous, they’d prefer to do more work then be told they...didn’t really need to do it, rather than the other way around when they should have done it.”

This may lead to resistance from officers who prefer to respond to what they view as “real crime” or from those who lack specialist knowledge which also affects their response. Whilst risk assessments continue to take place at the scene of the crime, and resources are allocated dependent on risk, the mothers will continue to be directly affected by inconsistencies of initial responses from police.

5.4.3.3 Choice

In 2005 a Home Office report²¹⁸ confirmed that while officers retained discretion over the decision to arrest there was a “clear expectation” that they would do so in cases of domestic abuse. All of the officers I spoke to were enthusiastic about arresting suspects. Constable P1 explained that, “us making the decision to remove the perpetrator, takes the onus away from the victim.” When asked about the circumstances where an attending officer would arrest a suspected offender against the victim’s wishes, Constable P1 told me that:

“if it had been a third hand report, and they said they had heard the victim shouting ‘get off me, you’re hurting me’

²¹⁸ Home Office *Domestic Violence: A National Report* (2005)

type thing, they go round and she says no it hadn't happened, if [the officers] have reason to believe it had [happened] they can still arrest upon suspicion of that offence. Then try to see what evidence they can gather in the meantime. Sometimes without her support."

Inspector P3 told me that:

"[we can] run a victimless prosecution, which we are getting more through now, which is brilliant, we are getting the CPS saying 'no I'll run that' because the officers are doing so much more [investigating] and getting that much more [evidence]."

The drive for evidence based, or victimless prosecutions where the police do not rely on the victim to provide evidence is encouraged by the College of Policing.²¹⁹ The evidence must still pass the Full Code Test, but officers are encouraged to extend investigations of domestic abuse beyond the victim. However, there can be a tension between a presumption of arrest and the mother's choice. When a police officer follows this policy and arrests an alleged abuser despite the mother asking them not to, any control of juridical power that the mother may have had is diminished. Monckton-Smith et al. argue that the abused mother is a skilled manager of her own situation, who perceives that the person who can offer her

²¹⁹ See <<https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/investigative-development/#building-an-evidence-led-case>> Accessed 7th May 2018

the most safety is her abuser and not necessarily the police.²²⁰ The police have a job to do, which is to identify offenders and hold them to account through the criminal justice system; they are not equipped to provide the mother with ongoing support, and she knows this.²²¹ Following the use of the police to protect her in the short term, her rejection of ongoing protection from the criminal law is a strategic one.²²² By rejecting support from the police, the mother may be exercising her autonomy, because she knows it is safer to drop the charges than it is to proceed at that time. Whatever the police offer her in terms of protection must exceed the risk she knows she faces from her abuser. M2 described a time when she had felt tricked into giving a supporting statement, which then led to her husband being arrested against her wishes:

“I was so taken aback by finding that suddenly I was making a statement when I didn’t know I was making a statement...it had been taken out of my hands...it was out of my control.”

Following the withdrawal of this statement an officer came to visit M2 and indicated that by not supporting a prosecution she was failing to protect her daughter:

“She wanted me on her side, to prosecute [my husband] and everything and then she did this... It caused a problem

²²⁰ Monckton-Smith et al. above n 85 p.28

²²¹ *ibid* p.33

²²² *ibid* p.41

to me, like why would I change my mind when you're acting like this and you're making me feel like this...?"

This seems to indicate that M2 viewed supporting a prosecution as something that would help the police officer with her job rather than being for her own protection. The police's objective is to achieve an arrest and subsequently a prosecution wherever possible, whilst the mother's objective is to stay safe. When questioned about this, Inspector P3's justification for arresting a suspected abuser against the victim's wishes was to suggest that:

"When we are trying to drive our investigation on the basis of the victim's compliance and wishes, etcetera, sometimes we need to say 'well I'm sorry, but you have been a victim of crime too many times, you're not changing your ways, we're going to make sure something happens now that changes that...'."

The mother and her lived experiences do not appear to be central to officers' decision making when they are responding to domestic abuse. The very idea of a "victimless prosecution" for a crime of domestic abuse is ironic, due to the many intricate ways in which the abuser victimises the mother during and after their relationship ends. As Duggan concludes:

"A shift towards victim-centred resources and victim-focused policy and practice would require a complete

overhaul to ensure that the criminal justice system truly
has the wants and needs of victims at heart.”²²³

5.5 Conclusion

Police officers face increasingly high expectations in their responses to domestic abuse. Their engrained cultures and working models are not fit for purpose when accounting for the needs of victims of domestic abuse, yet they face intensified scrutiny in their dealings with them. There exists a conundrum around the use of discretion, with policies calling for less discretion in favour of a presumption of arrest, yet greater discretion being required to identify the increasing breadth of behaviours which constitute domestic abuse and when making assessments of risk. These conflicting instructions result in over-zealous categorising of situations as domestic abuse, or the converse of this, which sees behaviours which fit the category of coercive control not being identified as criminal. The result of these contradictions and discrepancies is the inconsistency of the services that the mother receives. Police agencies are responsible for holding criminals to account; their work does not generally involve the support of victims of crime, the exception being when dealing with domestic abuse. Despite their varying levels of understanding of domestic abuse, police officers are progressively expected to respond as experts when dealing with victims. They sit within a multi-agency arena of fellow experts, yet the mother does not appear central to their operations.

As with all victims of violent crime, the abused mother is reliant on the police to protect her from harm, even for the short term, by removing the offender. She is

²²³ Duggan, above n 34 p.214

the expert of her own situation and if she knows what to expect from a police response she is able to utilise their power as part of her safety planning. Officers may therefore be better placed to respond to domestic abuse as they do to all other crimes, whilst ensuring that specialist support from domestic abuse trained providers is allocated to victims as soon as they become known to the police. An example of police working closely with specialist support services when responding to domestic abuse incidents, is a project which Northumbria police force ran between 2013 and 2015. During this pilot project domestic abuse specialists accompanied officers when they were called to incidents of domestic abuse and were able to support the victim at the scene. The reported outcomes of this initiative included a rise in the number of victims being referred to the specialist support services. Wearside Women in Need, who were the specialist service working alongside the police, reported that 92% of women referred following the support worker's attendance at the scene engaged with ongoing support services and the number of women being referred rose from 1% to 55%.²²⁴

In addition to bridging the gap between an incident occurring and support services being offered, the attendance of a specialist support worker at domestic abuse incidents would also reduce the reliance upon police to complete the risk assessments which determine the support offered to victims. The police could concentrate their efforts on reducing crime by arresting abusers at the scene, instead of determining which victims are deserving of their protection and which

²²⁴ The Guardian, *Domestic Violence Patrol "You're Always Thinking, what if he Comes Back and Kills Her?"* (30th March 2015) Available <<https://www.theguardian.com/society/2015/mar/30/domestic-violence-patrol-northumbria-police>> Accessed 10th August 2018

are not. This may better promote the mother's autonomy as she would be aware of the response she can expect when she involves the police in her situation. The mother would not be reliant upon the knowledge and attitude of the different attending police officers as she would be able to engage with a support worker who has specialist knowledge, whilst the police officer undertook his role in responding to a crime.

Chapter Six - The Abused Mother and Private Family Law Proceedings

6.1 Introduction

This chapter examines the mothers' relationships within private family law proceedings. Mothers may find themselves involved in family law proceedings following separation from their child's father. If there is conflict about where the child will live or about contact with the non-resident parent, these child arrangements can be determined and formalised by the family law process. Unlike the other processes examined in this thesis, family law proceedings bring the mother into relationships with a variety of professionals. She may have a solicitor, she will have involvement with a child welfare professional and she will have contact with a judge. These relationships are all situated within the same setting which contains the same structuring forces. However, the practices in each of the relationships alter these forces in different ways, creating power dynamics which are distinct to each relationship within the same setting. This chapter will therefore examine the setting of the family court and the forces which exist in this setting, before examining the practices of each relationship individually to determine to what extent each relationship fosters the mother's autonomy.

6.2 Legal Framework and Processes

The mothers in my study were predominately involved in the family court as respondents following the applications for child arrangement orders made by their ex-partners, or in one case by paternal grandparents.¹ Child arrangement orders

¹ Children Act 1989 s.8

encompass conditions of where a child will reside and formalise the nature of contact with the non-resident parent. A further order which is available in the family court is the prohibited steps order.² This order prohibits a parent from taking specific actions in relation to their child. For example, a prohibited steps order may bar a child being taken out of the country or forbid the non-resident parent from failing to return the child to their resident parent following contact. Two of the mothers were also granted non-molestation orders through the family court; these were discussed in previous chapters and will also be mentioned below.

As with all areas of the law which involve children's upbringing, the child's welfare is paramount to the making of child arrangement and prohibited steps orders.³ The Children Act provides the court with a "welfare checklist"⁴ which the judge should consider when deciding what is in the child's best interest. This list includes: the child's wishes and feelings (dependent on age and understanding), their physical and emotional needs, the child's characteristics, the effect on the child of any changes of circumstance, any harm which the child has suffered or may suffer, how capable the child's parents are of meeting her needs, and consideration of the range of powers available to the court. When deciding issues of contact between the child and the non-resident parent, section 1(2A) of the Children Act 1989 (introduced in 2014) requires the courts:

² *ibid*

³ Children Act s.1

⁴ Children Act s.1(1) and s.1(3) respectively

“to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child’s welfare.”⁵

The “involvement” of the parent can be of a direct or indirect nature.⁶ The legislation specifies that the parent should only be involved in a way that “does not put the child at risk of suffering harm”⁷ and any risk of harm must be proven before the court.⁸ In essence, if there is no evidence that the non-resident parent will pose a risk of harm, there is a presumption that it is in the child’s best interest to have contact with both parents, therefore if no risk of harm can be proven to the courts then some form of contact will be granted. In *Re C*⁹ it was held that a relationship with the non-resident parent must be enforced in the absence of a cogent reason for not promoting the relationship. The Children Act includes measures for the enforcement of contact, including monitoring compliance with contact orders and directions,¹⁰ enforcement orders imposing unpaid work on the resident parent for failure to comply with a contact order¹¹ and measures to award financial compensation to the non-resident parent in the event of the resident parent failing to comply with a contact order.¹²

Practice Direction 12J (PD12J) provides a four-stage framework which should be followed by courts and practitioners where allegations of domestic abuse are raised in child arrangements cases. This Practice Direction was issued in 2008 by the President of

⁵ Children Act s.1 (2A)

⁶ Children Act s.1 (2B)

⁷ Children Act s.1 (6)(a)

⁸ Children Act s.1 (6)(b)

⁹ [2001] EWCA Civ 521

¹⁰ ss.11G, 11F

¹¹ s.11J

¹² s.11O

the Family Division following concerns raised that allegations of domestic abuse were being ignored during family proceedings in the drive to promote contact.¹³ It was subsequently amended and extended in 2014, and again in 2017. An allegation may come directly from a party, via a solicitor, directly from a litigant in person, or arise during the safeguarding checks undertaken by Cafcass. If the allegation of domestic abuse is contested by the alleged abuser, the first stage is for the court to determine whether the allegation, if true, is likely to be relevant to the making of a child-arrangements order and if so, whether it is necessary to hold a fact-finding hearing to adjudicate on the disputed allegations. At this stage the Practice Direction calls for no interim contact arrangements to be made, unless the court is satisfied that any arrangements are in the child's best interest and do not expose the child to an "unmanageable" risk of harm.¹⁴ If a fact-finding hearing is held the court must give directions as to how the proceedings should be conducted, to ensure that the matters in issue are determined as soon as possible, fairly and proportionally and within the capabilities of each party.¹⁵ If the court decides not to hold a fact-finding hearing, the order must record the reasons for that decision.¹⁶ Next, if it is established (through admission or findings of fact) that domestic abuse has been perpetrated, the court must consider whether to request an expert assessment of risk and whether either party should be ordered to attend any intervention programmes as a pre-condition of any child arrangements order.¹⁷ Finally the court must determine what arrangement would

¹³ Barnett, A "Like Gold Dust These Days': Domestic Violence Fact-Finding Hearings in Child Contact Cases" *Feminist Legal Studies* 23 (1) (2015) p.55

¹⁴ Paragraph 25

¹⁵ Paragraph 19

¹⁶ Paragraph 18

¹⁷ Paragraphs 33-34

promote the child's welfare. When making this decision the court must take into account: what abuse has occurred, the results of the expert risk assessment, any harm which the child or resident parent have suffered and any future harm they may suffer, the motivation of the non-resident parent in pursuing contact with the child, the likely behaviour of the non-resident parent during contact, the effect of this on the child and the resident parent, and the other factors on the welfare checklist.¹⁸ This framework places an increased expectation on the courts to determine the extent and effects of domestic abuse on the children and resident parents when making child arrangement orders, whilst also requiring the court to prioritise their safety. The mothers I interviewed were involved with the family court system when the 2014 version of PD12J was in place.

6.2.1 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

The introduction of the LASPO Act significantly reduced access to legal aid in family law cases.¹⁹ Prior to these measures, legal aid funding was available for legal advice and representation within the family courts.²⁰ Following the LASPO Act, access to legal aid for private family proceedings has been restricted to applications for protective orders under the Family Law Act 1996,²¹ and cases where the applicant falls into one of the exceptional categories.²² These categories include victims of domestic abuse who are able to satisfy the Legal Aid Agency's evidential criteria.²³ Restrictions to legal aid have forced more victims of domestic abuse to navigate family proceedings without legal

¹⁸ Paragraphs 35-37

¹⁹ See Hunter, R "Doing Violence to Family Law" *Journal of Social Welfare and Family Law* 33 (4) (2011) pp.343-359

²⁰ This was subject to means testing

²¹ s.9

²² Legal Aid, Sentencing and Punishment of Offenders Act 2012 (sch.1)

²³ Civil Legal Aid (Procedure) Regulations 2012 Reg 33

representation. As Lee and Tkacukova's study found, Litigants in Person (LiPs) tend to be people on a low income who have relatively little educational background.²⁴ In Lord Woolf's report into the civil justice system, he found that "the court system and its procedures ... are still too often inaccessible and incomprehensible to ordinary people."²⁵ He argued that access to the civil courts would be improved for ordinary people if they were able to understand the processes, which he said were "incomprehensible to many litigants."²⁶ The vast majority of ordinary people do not have knowledge of the law which relates to families²⁷ and most litigants are faced with the "fear of the unknown" when they are dealing with the courts.²⁸ Court procedures which LiPs are faced with navigating include the accurate completion of relevant forms, the production and duplication of documents in line with the court's requirements and filing the documents on time which can be daunting without the assistance of a legal professional.²⁹ An additional stage of family proceedings which was introduced in 2011³⁰ and formalised in primary legislation in 2014³¹ is the compulsory attendance for applicants at a Mediation Information and Assessment Meeting (MIAM), prior to proceedings being issued (subject to exceptions, including cases involving domestic abuse). Legal aid is currently available, subject to means testing, for the MIAM and mediation, and for a limited amount of legal advice following mediation.³² However,

²⁴ Lee, R and Tkacukova, T *A Study of Litigants in Person in Birmingham Civil Justice Centre: CEPLER Working Paper 02/2017* (2017)

²⁵ Woolf, H *Access to Justice: Final Report* (July 1996)

²⁶ Woolf, H *The Pursuit of Justice* (2008) p.311

²⁷ Herring, J *Family Law* (2017) p.22

²⁸ Woolf, above n 25 p.312

²⁹ Trinder, L et al *Litigants in Person in Private Family Law Cases* (2014) p.24

³⁰ Practice Direction 3A

³¹ Children and Families Act 2014 s.10

³² Morris, P "Mediation, the Legal Aid, Sentencing and Punishment of Offenders Act of 2012 and the Mediation Information and Assessment Meeting" *Journal of Social Welfare and Family Law* 35 (4) (2013) p.445-457

none of the mothers in my study had direct experience of attending a MIAM or of mediation.

As noted above, with the introduction of the LASPO Act, private family law matters were removed from the scope of legal aid, with some limited exceptions. Felicity Kaganas argues that access to family justice has historically been granted a lower status than the main pillars of the welfare state, and now that we find ourselves in a period where fiscal austerity is the priority of government policies, legal aid spending has been identified as “profligate and unnecessary.”³³ The removal of the option of legal representation from many separated parents in turn reduces the number of those who will enter into family law proceedings. Mant and Wallbank argue that although the family court is open to all, it is impossible for many parents to engage with family law in a way that they could with legal representation.³⁴ In withdrawing legal aid from the majority of family law cases, the message radiating from the government is for people to “take greater parental responsibility for their problems.”³⁵ Alongside the removal of solicitors’ private family work from the legal aid scheme, the compulsory attendance at a MIAM³⁶ prior to any court applications was intended to make mediation the first port of call in place of a lawyer.³⁷ However, as Jess Mant cautions:

³³ Kaganas, F “Justifying the LASPO Act: Authenticity, Necessity, Suitability, Responsibility and Autonomy” *Journal of Social Welfare and Family Law* 39 (2) (2017) p.168

³⁴ Mant, J and Wallbank, J “The Mysterious Case of Disappearing Family Law and the Shrinking Vulnerable Subject: The Shifting Sands of Family Law’s Jurisdiction” *Social and Legal Studies* 26 (5) (2017) p.631

³⁵ Ministry of Justice *Proposals for the Reform of Legal Aid in England and Wales* (2010) p.16

³⁶ Children and Families Act 2014 s.10

³⁷ Maclean, M *Delivering Family Justice: New Ways of Working for Lawyers in Divorce and Separation* (2015) p.65

“it is imperative that justice, fairness and equality are valued not in economic terms, but for the role that they play in ensuring that family law is accessible to all who need it.”³⁸

Encouraging the norm of private dispute resolution has a cost saving implication due to the reduction of access to legal aid. However, as Kaganas argues, another intention of the Act was to encourage families to:

“take responsibility both for the choices that have led to their difficulties and for resolving these difficulties without the help of the justice system.”³⁹

The lack of legal aid funding imposes a choice on disputing families, to either fund themselves through the family court process, to attend court as a LiP, or enter into Alternative Dispute Resolution (ADR) in the form of mediation. As Rosemary Hunter argues:

“the government’s aim was not merely to restrict spending on legal aid as a short-term austerity measure, but to limit permanently the use of public resources (both legal aid and the courts) for what were seen, in the family law context, as essentially ‘private’ disputes.”⁴⁰

³⁸ Mant, J “Neoliberalism, Family Law and the Cost of Access to Justice” *Journal of Social Welfare and Family Law* 39 (2) (2017) p.256

³⁹ Kaganas, Felicity “Justifying the LASPO Act: Authenticity, Necessity, Suitability, Responsibility and Autonomy” *Journal of Social Welfare and Family Law* 39 (2) (2017) p.182

⁴⁰ Hunter, R “Inducing Demand for Family Mediation – Before and After LASPO” *Journal of Social Welfare and Family Law* 39 (2) (2017) p.162

6.2.2 Cafcass

Cafcass (formerly the Child and Family Court Advisory and Support Service) was created in 2001 under the provisions of the Criminal Justice and Court Services Act 2000. Cafcass is a public body, independent of the courts, social services, education and health, and is sponsored by the Ministry of Justice (MoJ). Cafcass represent children in the family court. Cafcass officers are qualified social workers, who upon request from the court, work with families to ensure children's voices are heard throughout the proceedings. Their involvement begins with safeguarding checks after an application for a child arrangements order is made. These involve a Cafcass officer contacting the police and local authority to obtain information pertaining to potential safety or welfare risks to the children named in the application. The Cafcass officer will also contact both parties prior to the first hearing and will provide a short report to the court, detailing the information obtained from all sources.⁴¹ At the first hearing, a Cafcass officer may also be involved in discussions with both parties to assist them to reach an agreement about child arrangements. Cafcass also commission local providers to deliver the "Separated Parents' Information Programme" (SPIP), attendance at which often forms part of a court order for separated parents.⁴²

6.3 The Mother's Relationships in the Family Law Process

As already mentioned, the mother's involvement with the family court brings her into contact with various legal and non-legal professionals. The relationships are all situated

⁴¹ Children Act s.7

⁴² See <<https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/separated-parents-information-programme/>> Accessed 16th February 2018

within the setting of the court, where the forces of juridical power, biopower and gender exist.

6.3.1 The Setting

The vast majority of the mothers' relationships throughout their family court proceedings were situated in the court building, although the mothers met their solicitors in the law firm offices for their initial appointments. M3 met her solicitor once and subsequent communications took place either by phone or by email. Ongoing communication between the other mothers and their solicitors also generally occurred in this way as this reduced the time and the cost of face to face meetings. M7 told me that she spoke to her solicitor by telephone regularly as the case progressed and M8 explained that she had been given her solicitor's mobile phone to call whenever she needed to discuss the case. The solicitors then met their clients at the court building. The mothers spent a large amount of time in the court's waiting room, which is also the setting for negotiations between the parties prior to the hearings.⁴³ Mothers also met with their solicitors and child welfare professionals in the private side rooms available within the court setting. The hearings took place in closed courtrooms. M6 described the court setting as "intimidating."

6.3.2 The Forces Present in the Court Setting

The following forces exist within the court setting and are present in all of the relationships which occur within this setting, although each force is present in a variety of guises and at different strengths specific to each of the relationships.

⁴³ Trinder et al. above n 29 p.47-48

6.3.2.1 Juridical Power

Juridical power is nested in the family court setting. Whilst family law does not totally control family life, involvement in the family court will structure the lives of all parties in one form or another. One manifestation of juridical power is its specialised nature which distinguishes it from the practices of everyday life and places it out of the reach of the general public. Additionally, as mentioned above, family courts deal with families with complex problems, in difficult circumstances.⁴⁴ Solicitor S1 explained how family cases can easily become very complex:

“Section 8 orders are the ones which take the longest. When it’s children....at the moment I have a really complex private family case over contact, with an element of sexual abuse, where my client is saying dad has sexually abused the little girl. That hasn’t left my desk since she instructed me...so yeah they can be very complex...”

As also described above, the court procedures which LiPs are faced with can be complex and daunting. Within the court room the imposing force of juridical power may be overwhelming, making it very difficult for a lay person to present themselves in a way which places them on a level playing field with legal professionals.⁴⁵

During family proceedings the abused mothers were faced with a labyrinth of complex processes, housed within a physically imposing building steeped in tradition. Juridical power flows freely in this environment and creates subjects who have access to the law

⁴⁴ Trinder, L Conolly, J, Kellett, J and Notley, C *A Profile of Applicants and Respondents in Contact Cases in Essex* (January 2005)

⁴⁵ Macfarlane, J *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report* (2013) pp.95-96

(lawyers) and subjects who rely on others to access the law for them (litigants). The solicitor is the conduit of juridical power, which she accesses and utilises on behalf of the mother. As Jess Mant explains, the family court system is built upon all parties having an advocate to guide them through the “often complex processes and customs of the system.”⁴⁶ The reliance upon an advocate constructs the solicitor’s role as significant to the mother’s involvement with the family court, as the solicitor enables the mother to respond to her ex-partner’s demands. The solicitor has the ability to harness the power of the law on the mother’s behalf and reduce its potentially negative impact for her. Two of the mothers who were LiPs during their family hearings spoke to me about the fear they had of the courtroom. M6 told me that as soon as she received the letter setting a court date she lost her appetite and was in “general panic really.” As is the case for the majority of people, M6 had never been inside a court building. The unfamiliarity and inaccessibility of the setting strengthens the juridical power present in the court. Fear of the court also permeates society and juridical power began to affect M6 before she even entered the court’s waiting room. M9 had been to court on numerous occasions and told me that each time she felt, “incredibly ill, emotional, I can’t really eat...it makes me very nervous and I feel that I have no support.” M9s ex-partner had a solicitor, but M9 did not, and she told me that without legal advice leading up to the hearing she feared not knowing what to expect at court. She told me, “I feel like I’m muddling around in the dark.” The mothers’ fear of the unknown judicial process was also accompanied by the fear of facing their abusers in court.⁴⁷

⁴⁶ Mant, above n 38 p.251

⁴⁷ Hunt, above n 19 p.353

Judges grant court orders which are coercive in nature and shape the structure of the families' lives. For example, M6 explained that the judge asked them to agree the contact for the following Christmas, so he could include this arrangement in the order; this was at a hearing in January. She told me this had made her realise that "you're thinking about Christmas for the next god knows how many years." She was also ordered to attend a SPIP course, which she told me, "we *had* to agree to do," and if she did not attend "the courts would be notified." M7 had a prohibited steps order attached to her child arrangements order which prohibited her from taking her son to any medical appointments. This was following an allegation made by her ex-partner that she was suffering from Munchausen Syndrome by Proxy.⁴⁸ This allegation was unfounded following a psychological assessment. M8 was involved in family proceedings as the respondent to an application made by her 18-month-old child's paternal grandparents. The application resulted in a child arrangement order stipulating fortnightly weekend contact for the grandparents and setting limits on M8 taking her child out of the country without the permission of the courts. These mothers were all required to change their day to day lives to accommodate the requirements of the contact orders. They must adhere to the orders, or face sanctions. In this way, juridical power structures the mothers' relationships in the family court setting and permeates their wider lives.

Non-resident parents are also able to exploit juridical power and utilise it to control their ex-partners following separation.⁴⁹ In M9's case her ex-partner had "used the court system as a kind of way of getting at us." She had been to court as the respondent to his

⁴⁸ This is a relatively rare form of child abuse that involves the exaggeration or fabrication of illnesses or symptoms by a primary caretaker. See <<https://www.nhs.uk/conditions/Fabricated-or-induced-illness/>> Accessed 22nd February 2018

⁴⁹ Radford, L and Hester, M *Mothering Through Domestic Violence* (2006) pp.91-95

applications over thirty times. He utilised the juridical power of the family courts to his advantage, however upon examination of M9's court files it was evident that most of the conditions set out in the orders attempted to restrict *his* behaviour more than hers. Conditions included, "the applicant father will not disparage the mother or her partner and shall not question the child about his mother or partner" and a prohibited steps order stated that "the applicant father shall not bring the child into contact or permit contact with the paternal uncle." There was evidence in the court files of numerous undertakings, including an agreement not to argue at handovers and for the father to return book bags and school clothes after contact. In this way, the courts were involved in attempting to control the minutiae of family life. As will be discussed below, the mothers seem to be disproportionately affected by the court's directives.

The mothers who were represented by a solicitor, and also one of the solicitors, used quite combative language when describing their involvement in the family court. For example, M3 told me that she had specifically chosen her solicitor following her father using the same person for his divorce. M3 explained that "[my] mum said she's a right bitch, which is why I wanted to use her..." M6 told me that she knew her ex-partner would win in court, so she had decided not to even "put up a fight." M7 described how she felt like she was "winning" when she was speaking to her solicitor and also when discussing her most recent court hearing she told me "we won in court that day." And S2 explained that she tells her clients "you need to fight now...I'm telling you now you need to fight". This indicates that the mothers and this particular solicitor view the family court as a place where there are winners and losers, which appeared to be a reaction to the coercive nature of juridical power.

6.3.2.2 Biopower

Family law, more than any other area of law, “operates not by physical coercion but by indirect symbolic controls.”⁵⁰ Family law steers behaviour in a general, rather than a specific way⁵¹ and seeks to normalise the behaviour of families as a unit; but also, of individuals within the family. During the family law process juridical power and biopower converge. An overarching example of the biopolitical nature of family law is the welfare principle which seeks to ascertain what is in the best interest of the child. Families are also guided and quietly coerced by family law following separation. The norms of conduct following separation include the expectation of parents to behave in a reasonable and self-denying way, whilst remaining conscious of what effect their actions have on their children.⁵² These expectations are woven into the Children Act and the LASPO Act.

In order to determine what is in the best interest of the child the court looks to the knowledge of child welfare professionals. In this way, family law is influenced by disciplines such as child psychology, and as such child welfare knowledge has become an established area of expertise.⁵³ King and Piper describe the construction of the notion of the “welfare expert” who they argue is given a privileged status and a “mantle of reliability” which would ordinarily be reserved for the legal fraternity.⁵⁴ These experts include social workers, Cafcass officers and health visitors, as well as experts from the psy. disciplines. The use of the child welfare experts’ knowledge, which is arranged

⁵⁰ Dewar, J “The Normal Chaos of Family Life” *The Modern Law Review* 61 (4) (July 1998) p.470

⁵¹ *Ibid* 483

⁵² *Ibid*

⁵³ King, M “Welfare and Justice” in King, M (ed) *Childhood, Welfare and Justice* (1981) p.111

⁵⁴ King, M and Piper, C *How the Law thinks about Children* (1995) p.53

around the norm of the best interest of the child, generates the force of biopower during family proceedings. Biopower is also present in the individual relationships between the mother and professionals who have been bestowed with the status of experts within the court system. The majority of the mothers in my study were involved with the child protection process while simultaneously navigating the family law process; their social workers were therefore involved in their family proceedings. As discussed in chapter four, the social workers maintained the status of expert on the family, and in the family proceedings this was translated as the expert on the child's welfare.

Within the family court setting the plethora of research from child welfare experts is distilled. From this, norms of behaviour are established and are applied to the families involved in family law proceedings. Dewar cautions that the court's use of oversimplified concepts distorts, exaggerates and compartmentalises child welfare science.⁵⁵ As Adrienne Barnett claims:

“the law has to base its decisions on information derived from these child welfare experts... The law has to reconstruct child welfare knowledge in ways that ‘make sense’ in law, which inevitably leads to reductionism.”⁵⁶

Families are shaped by their social context⁵⁷ and in turn, families shape the ways in which people think they ought to behave, which leads to a general adaptation of how

⁵⁵ Dewar, above n 50 p.479

⁵⁶ Barnett, A “The Welfare of the Child Revisited: In Whose Best Interests Part I” *Family Law (January 2009)* p.50

⁵⁷ Diduck, A and Kaganas, F *Family Law, Gender and The State* (3rd ed) (2012) p.19

they then do behave.⁵⁸ The stable family is a politicised ideal which has increasingly been a policy concern for United Kingdom Governments since the 1980s when New Right⁵⁹ policies centred on increasing the stability of the family. This was in response to the rise in divorce rates, cohabitation and single parents. As Margaret Thatcher reminisced in her memoirs:

“there were crucially important limits to what politicians can do.

[The Government] could only get to the root of crime and much

else besides by concentrating on strengthening the traditional

family.”⁶⁰

It has been widely believed that children sustain harm when their parents separate and that they are damaged by the loss of contact with their non-resident parent, who is typically the father.⁶¹ The ongoing contact between a child and their absent father is therefore encouraged, in order to reduce the impact of a fatherless family following separation. Van Krieken describes this as the “post-separation co-parenting model,” with themes of cooperation, agreement and negotiation.⁶² There is an abundance of expertise on the matter of post-separation contact, which has been condensed into the dominant view that contact is “almost always in the child’s interest”⁶³ and that the

⁵⁸ Foucault, M “The Politics of Health in the Eighteenth Century” in Rabinow, P (eds) *The Foucault Reader: An Introduction to Foucault’s Thoughts* (1984) p.278

⁵⁹ Clarke, A, Cochrane, J and Gewirtz, S *Comparing Welfare States* (2nd Ed) (2001) pp.91-93

⁶⁰ Thatcher, M *The Downing Street Years* (1993) p.628

⁶¹ Kaganas, F “Contact, Conflict and Risk” in Day Sclater, S and Piper, C *Undercurrents of Divorce* (1999) p.99

⁶² Van Krieken, R “The ‘Best Interests of the Child’ and Parental Separation: on the Civilising of Parents” *The Modern Law Review* 68 (1) (2005) pp.25-48

⁶³ Re O (Contact: Imposition of Conditions) [1995] 2 FLR 124; R (A Child) [2016] EWCA Civ 1664; Re K [2016] EWCA Civ 99

normative post-separation family should be “separate but continuing”⁶⁴ regardless of what occurred in the relationship pre-separation.

The message of separated parents working in collaboration and with positive interaction for the good of their children is radiated⁶⁵ from family law cases where the separated but continuing model is the desired outcome for the courts. However, some adults are unable to live up to these behavioural expectations following separation. Presumably this accounts for a high percentage of those in the family court system. This normative expectation therefore serves to open a chasm, into which those who fail to behave in line with these norms fall. The expectation that all families should follow norms of behaviour, or as Wallerstein and Kelly term “presumptive patterns”⁶⁶ of post-separation parenting, does not take into account the boundless variety of situations that families find themselves in, or even how individual children in the same family are affected differently by their family’s circumstances.⁶⁷ Pryor and Rogers argue that:

“Although positive contact is in itself a good outcome for children who usually want it, the assumption that contact *per se* is measurably good for children does not stand up to close scrutiny.”⁶⁸

⁶⁴ Kaganas, F “Contact and Domestic Violence: Re L (Contact: Domestic Violence) Re V (Contact: Domestic Violence) Re M (Contact: Domestic Violence) Re H (Contact: Domestic Violence) [2000] CFLQ 311 *Family Law* (29th September 2011)

⁶⁵ Dewar, above n 50 p.483

⁶⁶ Wallerstein, J and Kelly, J *Surviving the Breakup: How Children and Parents Cope with Divorce* (2008)

⁶⁷ Kaganas, F and Piper, C “Divorce and Domestic Violence” in Day Schlater, S and Piper, C (eds) *Undercurrents of Divorce* (1999)

⁶⁸ Pryor, J and Rogers, B *Children in Changing Families: Life after Parental Separation* (2001) pp.6-7

A presumption of contact also fails to address issues such as ongoing coercive control of the abused mother through post-separation child contact,⁶⁹ the effect that this emotional abuse has on the children involved,⁷⁰ or indeed the effect on the child of spending time with a parent who they witnessed being violent to their mother.⁷¹ Official government statistics show that in 2010, of 95,460 disposals, only 300 contact orders were refused;⁷² this is despite a recent estimation that there are allegations of domestic abuse in almost two thirds of contact cases.⁷³ It would appear from these statistics that the courts are reluctant to order “no contact.”⁷⁴

As described above, the LASPO Act includes measures to remove legal aid funding from family law cases. These measures can be identified as biopolitical. By removing the option of funding, the parties are forced to take a different route to manage their dispute. This steers families towards the norm of the separated but continuing family model, where the parents are cooperative and agreeable and work together for the good of the children, despite no longer being an intact family. A further example of a measure which appears to be centred around saving public money is the requirement for mandatory attendance at a MIAM.⁷⁵ This measure only applies to applicants, although the respondent will receive a request to attend a MIAM. If they do not attend, the applicant may proceed to submit an application to the courts, and the non-

⁶⁹ Katz, E “Beyond the Physical Incident Model: How Children Living with Domestic Violence are Harmed by and Resist Regimes of Coercive Control” *Child Abuse Review* 25 (1) (2015) pp.46-59

⁷⁰ Coy, M, Perks, K Scott, E and Tweedale, R *Picking up the Pieces: Domestic Violence and Child Contact* (2012) p.10

⁷¹ Sturge, C and Glaser, D “Contact and Domestic Violence – The Experts’ Court Report” *Family Law* 20 (2000) pp.615-631

⁷² Ministry of Justice *Judicial and Court Statistics 2010* (2011)

⁷³ Cafcass and Women’s Aid, *Allegations of Domestic Abuse in Child Contact Cases* (2017) p.8

⁷⁴ Macdonald, G “Domestic Violence and Private Family Court Proceedings: Promoting Child Welfare or Promoting Contact?” *Violence Against Women* 22 (7) (2016) pp.832-852

⁷⁵ Children and Families Act 2014 s.10

attendance of the respondent will be recorded and may be used by the applicant during the court process as an example of their ex-partner's unreasonable behaviour. This practice creates a norm of separated parents who cooperate and communicate, through fear of being categorised as "unreasonable". The solicitors I spoke to all cited cost savings as the rationale behind the LASPO measures, with none of them appearing to recognise any intention of reducing the family's involvement with the courts. Therefore, it is possible that whilst the overtly coercive reduction of legal aid to save public money is obvious, the underlying ideology of reducing family involvement in the courts is covertly coercive and could be recognised as a "quiet coercion"⁷⁶ of biopower.

There is an underlying expectation in the implementation of these laws that all parties are able to think and behave autonomously and are therefore able to participate equally in mediation. Alison Diduck argues that this legal preoccupation with autonomy has skewed the balance between private and public and has encouraged legal disputes to be resolved outside of the "publicity and transparency of the courts."⁷⁷ Those parties who are able to prove that they have been victims of domestic abuse are able to access legal aid and may bypass the MIAM requirement. As Kaganas explains, this is because victims of domestic abuse are not deemed to be responsible for their problems and are unable to exercise the requisite autonomy to deal with these problems themselves.⁷⁸ If there is no documented evidence available to prove that domestic abuse has occurred, the Legal Aid Agency will not recognise the mother as vulnerable and she will be expected to follow the standard process. These measures categorise parties in family

⁷⁶ Foucault, M *Discipline and Punish: The Birth of the Prison* (1991)

⁷⁷ Diduck, A "Autonomy and Family Justice" *Child and Family Law Quarterly* 28 (2) (2016) p.134

⁷⁸ Kaganas, F "Justifying the LASPO Act: Authenticity, Necessity, Suitability, Responsibility and Autonomy" *Journal of Social Welfare and Family Law* 39 (2) (2017) p.11

law proceedings into those who are vulnerable and therefore entitled to the support of a lawyer and the court, and those who are not considered to be vulnerable and are therefore expected to exercise their autonomy in mediation or represent themselves through the court process.

When navigating the private family law process, the abused mother faces competing expectations. The Government's hard-line response to domestic abuse is intent on reducing the cost of the effects of domestic abuse and encourages support of the mothers to end the abusive relationship. As examined in previous chapters there is an expectation on the mother to exercise her autonomy and leave the relationship with the guidance of specialist domestic abuse agencies and professionals with specialist expertise in domestic abuse. Yet, the family law policies examined in this section encourage the family form to continue beyond separation, citing the child's welfare. Ironically, the mothers I interviewed left their abusive relationships in order to protect their children's welfare, yet the family court process supported the abusive fathers to continue contact with their children. The impossible expectations with which the mother is faced can be recognised where these biopolitical policies converge.

6.3.2.3 Gender

Gendered forces are present throughout the proceedings because of the gendered nature of the family. The biopolitical structuring of the hetero-nuclear family form, which is facilitated through family law, places a disproportionate responsibility on the mother to maintain the family form, as Barnett argues:

“it was the core of New Right philosophy that women should
play a vital role in re-establishing the responsibility of men for

their families, particularly financial responsibility and in establishing the nuclear family.”⁷⁹

Although family law is based upon assumptions of gender neutrality, family practices during relationships and after separation are not gender neutral.⁸⁰ As discussed in earlier chapters, mothers undertake the bulk of unpaid work within the home setting, a large proportion of which involves the care of children. Despite more women being involved in paid employment, this is often arranged, by the mothers, around childcare and their children’s needs. For example, in Lewis and Welsh’s study it was found that within intact families the vast majority of fathers did not take responsibility for their children’s day to day welfare, with the mothers in most cases taking the majority of the daily “running” of the family.⁸¹ Diduck and Kaganas argue that by “equalising the status of both parents, the law may be masking the inequality of the contributions of most mothers and fathers to childcare.”⁸²

The majority of contact applications are made by fathers.⁸³ The concept of fatherhood has become confused in recent years. On the one hand “fatherhood continues to be defined in opposition to activities identified with mothering” with “successful fatherhood” still being “routinely portrayed as connected to a particular set of culturally masculine attributes” of authority, rationality and discipline.⁸⁴ This is contrasted against

⁷⁹ Barnett, A “The Welfare of the Child Revisited: In Whose Best Interest Part ii *Family Law* (February 2009) p.140

⁸⁰ *ibid* p.139

⁸¹ Lewis, J and Welsh, E “Fathering Practices in 26 Intact Families and the Implications for Child Contact” *International Journal of Law in Context* 1 (1) (2005) pp.81-99

⁸² Diduck, A and Kaganas, F *Family Law, Gender and The State* (2nd ed) (2006) p.299

⁸³ Trinder et al, above n 44 also; Hunt, J and Macleod, A *Outcomes of Applications to Court for Contact Orders After Parental Separation or Divorce* (2008) also; Smart, C, May, V, Wade, A and Furniss, C *Residence and Contact Disputes at Court* (2005)

⁸⁴ Collier R and Sheldon, C *Fragmenting Fatherhood* (2008) p.235

the traditionally “feminine” qualities of mothering, namely warmth, emotionality and nurturing. Yet on the other hand, ideas of fatherhood are changing, with the activity of fathering being identified as no different to the activity of mothering, simply carried out by a man.⁸⁵ The current understanding appears to be that fatherhood is what the father makes of it; he can choose to be hands on and active, or distant and aloof. Smart remarks that the status of fatherhood has taken on a new significance and that “to be a father carries very different meanings, emotions and behaviours than in the pre-war period.” She explains that these changes have coincided with, “legal changes in which the father has lost his legal authority whilst being regarded as more and more central to the family in emotional and psychological terms.”⁸⁶ This can be seen in the shift from the mid-nineteenth century when the father had the absolute right to the custody of his legitimate children, to the twentieth century position in which “decisions concerning the custody of children were to be decided according to what was in the child’s best interest” which Dewar explains can be seen as a shift from a rights model to a utility model.⁸⁷ Family law has therefore reshaped the concept of fatherhood, by moving from being primarily concerned with enforcement of rights between family members, to being primarily concerned with maximising the utility of the family.⁸⁸

The fact that mothers continue to be the primary carers of children is inevitably taken into account by courts in determining children’s welfare. However, this has engendered complaints from fathers’ rights groups who perceive a bias in favour of awarding

⁸⁵ *Ibid*

⁸⁶ Smart, C “The Legal and Moral Ordering of Child Custody” *Journal of Law and Society* 18 (4) (1991) p.485

⁸⁷ Dewar, above n 50 p.471

⁸⁸ *Ibid* p.470

mothers the residence of the child. If a child is living with their mother at the time of separation, and the mother is deemed by the court to be capable of caring for the child, the court is unlikely to move the child as that would be contrary to their welfare. Fathers' rights groups have called for a presumption of shared parenting, where children share their time equally between both parents upon separation. This goes further than the current presumption of shared contact which has been discussed above. However, as Collier and Sheldon explain, there continues to be a "zero-sum" understanding of residence as a form of power which mothers gain and fathers lose, which resonates with fathers' rights group thinking.⁸⁹ They caution that "law's relation to social change is far more complex"⁹⁰ than this zero-sum understanding, especially when determining such an abstract concept as the welfare of a child in such complex and enmeshed situations.

In Macdonald's study of 70 family law cases involving domestic abuse, the majority of applications were made by the non-resident father in relation to contact.⁹¹ In all of the cases where the child had refused to engage in contact this was still pursued, either with a Cafcass officer facilitating, or through indirect contact, with a view to "keeping the door slightly open" for direct contact in the future.⁹² The mothers were expected to encourage their reluctant children to take part in this contact.⁹³ Due to the strength of the presumption in favour of contact, women are easily constructed as acting on their own selfish needs when they are viewed as attempting to frustrate contact without a reason which the courts deem to be sufficient.⁹⁴ Collier explains that politicians and

⁸⁹Collier and Sheldon, above n 84 p.228

⁹⁰ *ibid*

⁹¹Macdonald, above n 74 p.837

⁹² *ibid* p.843

⁹³ *ibid*

⁹⁴ Wallbank, J "Getting Tough on Mothers" *Feminist Legal Studies* 15 (2007) p.197

policy makers have taken notice of the fathers' rights activists' growing profile, whose arguments for shared parenting "would on the surface...appear to chime in a number of respects with the dominant welfare discourse."⁹⁵ The ideal of the separated but continuing family, which is recognised by experts to be in the child's best interest, can be achieved by fathers who want to see, or share residence of, their children following separation. There has followed a rhetoric of the "good" father, with the polarised "bad" mother who is hostile to contact.⁹⁶ Smart argues that facilitating contact between the child and their father becomes a task for the mother, which she likens to the task of housework, in that it is taken for granted and is only visible when it is not done. When the mother refuses this extra work, she becomes morally blameworthy.⁹⁷ This is especially visible when the child does not want to see their father and the mother does not push them to adhere to contact.

A more recent phenomenon in private family cases, which fathers' rights groups have been keen to endorse, is the identification of "parental alienation". The concept of "parental alienation syndrome" was developed in the 1980s by Richard Gardner⁹⁸ and refers to a group of distinctive behaviours shown by children who have been psychologically manipulated by one parent to reject the other parent. The syndrome is not recognised in the Diagnostic and Statistical Manual of Mental Disorders (DMS)⁹⁹ as a mental disorder. Yet the language of "parental alienation" as a supposed practice as

⁹⁵ Collier, R "The Outlaw Fathers Fight Back: Fathers Rights Groups, Father4Justice and the Politics of Family Law Reform – Reflections on the UK Experience" in Collier, R and Sheldon, S *Father's Rights Activism and Law Reform in Comparative Perspective* (2006) p.62

⁹⁶ Wallbank, above n 94 p.214

⁹⁷ Smart, above n 86 p.496

⁹⁸ Gardner, R *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* (1992)

⁹⁹ This is the standard classification of mental disorders used by mental health and other health professionals for diagnostic and research purposes

opposed to a syndrome, continues to be used by practitioners.¹⁰⁰ For example in *Re M*, Bracewell J asserted that during a period when there is no contact with the non-resident parent, “the residential parent, usually the mother, uses the time to brainwash the child into rejection of the father.”¹⁰¹ In the case of *Re E (A Child)*¹⁰² guidance was provided for the management of cases where parental alienation was identified. Guidance includes judicial continuity and evidence to be heard at the earliest opportunity to establish whether the child’s refusal of contact is due to the influence of the resident parent. Commentators have suggested that in order to “protect” against parental alienation, the wishes and feelings of the child should be discounted in determining the overall welfare of the child.¹⁰³ In *S (Children)*,¹⁰⁴ for example, Thorpe LJ argued that the “burden” of deciding on contact with a non-resident father should not be on the 12 and 13-year olds, but rather the court should make this decision for them. In *H (Children)*¹⁰⁵ Parker J was dismayed that a child should be encouraged to flout the authority of a court order and that a child could assume that “compliance with adult expectations is optional.” She stated in her judgment that there had been a documented history of the mother having an inability to control her children, although this presumably rebuts the presence of parental alienation which would necessitate the mother having total control over the children and their thoughts.

¹⁰⁰ Doughty, J, Maxwell, N and Slater T *Review of Research and Case Law on Parental Alienation* (April 2018) p.5

¹⁰¹ *Re M* (Intractable Contact Dispute: Interim Care Order) [2003] EWHC 1024 (Fam) at para 8

¹⁰² [2011] EWHC 3251 (fam)

¹⁰³ Wiley, Francesca “Serious Parental Alienation – The Approach of the Courts and Practitioners in 2016” *Family Law* (June 2016) Available < <http://www.familylawweek.co.uk/site.aspx?i=ed161124>> Accessed 26th May 2018

¹⁰⁴ [2010] EWCA Civ 447

¹⁰⁵ [2014] EWCA Civ 733

In *B (A 14-year-Old Boy)*¹⁰⁶ where the child had not seen the father for eight years, the father had alleged parental alienation in his application for contact with the child. The mother denied this allegation, citing the father's inability to prioritise the child, his constant quizzing the child about her during contact, and his denigration of her and her new partner during contact, all of which had led to the child refusing to spend time with the father. The court found that alienation was not a factor and did not enforce contact. Citing the judgment in *Re C*,¹⁰⁷ the judge deemed there to be a cogent reason in the case of *B* for contact not to be promoted; he also warned against the overuse of parental alienation in contact cases. In a study of 215 enforcement applications, carried out by Trinder et al., only nine cases were found to involve behaviours which could be identified as alienation.¹⁰⁸ Fortin et al. also caution against assuming that a child's reluctance to have contact with their non-resident parent is due to brainwashing by the resident parent. They argue that even very young children may have very clear reasons for being resistant to contact.¹⁰⁹

The Cafcass website states that the definition and scale of parental alienation continues to be under debate, but it nevertheless includes a page dedicated to the phenomenon. Cafcass state that a parent's "alienating behaviours" sit on a continuum and rarely exist in isolation.¹¹⁰ They introduce the concept of "hybrid" cases, which they claim are the most common. Hybrid cases are defined as a combination of child and adult behaviours

¹⁰⁶ [2017] EWFC B28

¹⁰⁷ [2001] EWCA Civ 521

¹⁰⁸ Trinder, L, Hunt, J, Macloed, A, Pearce, J and Woodward, H *Enforcing Contact Orders: Problem-Solving or Punishment?* (December 2013) p.30

¹⁰⁹ Fortin, J, Hunt, J and Scanlon, L *Taking a Longer View of Contact: The Perspectives of Young Adults who Experienced Parental Separation in their Youth* (2012)

¹¹⁰ See <<https://www.cafcass.gov.uk/2017/11/27/alienation-rarely-exists-isolation/?platform=hootsuite>>

which lead to the child rejecting the non-resident parent. Alienating behaviours include one parent “badmouthing” or belittling the other, limiting contact, forbidding the child to talk about the other parent or creating the impression that the other parent does not love the child.¹¹¹ Interestingly, these behaviours are similar to those exhibited by domestic abuse perpetrators, both whilst living in the family home, and following separation during child contact. However, alienating parents are identified as those who live with the child, with the alienated parent being the non-resident parent. There is the potential for the concept of parental alienation to be exploited by abusive non-resident fathers in a bid to minimise their abusive behaviours. Yet as already mentioned, the abusive pre-separation behaviours of the non-resident parent/father tend not to be subject to the same degree of scrutiny.

There is a wealth of research into the effects of domestic abuse on children.¹¹² As discussed in chapter four, the definition of harm within the Children Act 1989 includes “impairment suffered from seeing or hearing the ill treatment of another.”¹¹³ Yet fathers who have admitted violence towards their children’s mothers still see themselves as “good” parents, whilst questioning the mother’s capacity for parenting and citing her opposition to contact as evidence of her unreasonableness.¹¹⁴ Because the presumption in favour of contact is so entrenched in family law, men need to prove very little in respect of their parenting skills to be granted a contact order.¹¹⁵ As Smart argues, “the

¹¹¹ Available < <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/parental-alienation/?highlight=alienation%20>> Accessed 26th May 2018

¹¹² For example, see Radford, L and Hester, M *Mothering Through Domestic Violence* (2006) Chapter four

¹¹³ Inserted by the Adoption and Children Act 2002

¹¹⁴ Kaganas, F and Piper, C “Shared Parenting – a 70% solution?” *Child and Family Law Quarterly* 14 (4) (2002) pp.365-384

¹¹⁵ Wallbank, above n 94 p.212

welfare imperative has created a situation in which the “bad” father is almost inconceivable” as it is “assumed that children need fathers so badly that mothers must be prepared to tolerate almost any behaviour.”¹¹⁶ Kaganas argues that the courts fail to examine the reasons underlying some resident mothers’ resistance to contact. These reasons may include a fear of abduction, violence towards the child, the father’s use of contact as a form of continued control, his poor parenting skills or substance misuse during contact. She argues that instead of concentrating on the “implacable hostility” of the mother, it is necessary to pay attention to the actual contribution of the non-resident parent to the child’s welfare.¹¹⁷ These gendered subjectivities of “implacably hostile mothers” and “safe family men” reconstruct the mothers’ fears of contact as irrational and as pathological self-interest because the dominant construction of the child’s interests aligns them with their father’s involvement.¹¹⁸

As introduced above, there is provision within the Children Act for sanctioning resident parents for the breach of contact orders, yet there is no way for a court to order an uninterested non-resident parent to have contact with their child.¹¹⁹ As Barnett argues:

“if children’s best interest were best served by continued contact, it should follow that children and resident parents should be able to apply for orders requiring the non-resident

¹¹⁶ Smart, *above n.86* p.497

¹¹⁷ Kaganas, F “Re L (A Child) (Contact: Domestic Violence) – Judgement” in Hunter, R, McGlynn, C and Rackley, E *Feminist Judgements: From Theory to Practice* (2010) p.124

¹¹⁸ Barnett, A “Contact at all Costs? Domestic Violence and Children’s Welfare” *Children and Family Law Quarterly* 26 (4) (2014) p.441

¹¹⁹ Wallbank, *above n 94* p.209

parent to have contact with the child, yet the law is extremely unwilling to enforce contact on reluctant fathers.”¹²⁰

There may be an argument that enforcing a reluctant non-resident parent to attend contact with their child may not create high quality contact for the child, which in turn may not promote the child’s interests.¹²¹ However, the same could be said for cases where the children have expressed the wish not to have contact with their non-resident father, yet contact is enforced regardless of their wishes.¹²²

In summary, the provisions of the Children Act 1989 and decisions made in family courts during child arrangement cases both draw upon and structure wider societal beliefs about the family. Family law’s biopolitical purposes are to encourage families to resolve disputes in private, and to strengthen the separated but continuing family form. The attendant presumption in favour of contact fails to protect the abused mother and her children. The pre-separation abuse is deemed inconsequential to post-separation contact decisions, which undermines the mother’s experiences of the abuse and trivialises her continued control through the family court. As Barnett argues:

“the gendered relations of power, that construct, underpin and sustain law’s current construction of ‘the truth’ about child welfare, constantly challenge and subvert attempts to focus professionals and courts on protecting children and women in private law.”¹²³

¹²⁰ Barnett, above n 79 p.140

¹²¹ Smart, above n 86 p.497

¹²² Macdonald, above n 74 p.837

¹²³ Barnett, above n 118 p.461

The mother may have separated from the abusive father in order to protect her children, only to find herself in a situation where the family court orders contact with the father, situating the mother as the problem.

6.4 Practices in Private Family Law Proceedings

The final stage of the relational autonomy framework is to identify the practices in the relevant relationships which may mitigate these structuring forces and allow the mother's autonomy to be promoted. Practices can be official policies and procedures, or the behaviours of those involved in the relationship. The next sections will separately examine the practices of the mother's solicitor, child welfare professionals involved in the mother's case, and the judge presiding over the case. These practices are drawn directly from the mothers' experiences of family proceedings, and also from interviews with the mothers' social workers and solicitors who were involved in family law cases.

6.4.1 The Solicitors' Practices

Not all of the mothers in my study were able to access legal representation. Some of the mothers had been able to access legal advice previously, but due to the measures introduced in the LASPO Act which restricts access to legal aid, were unable to continue to be supported by a solicitor throughout the duration of their involvement with the family courts. This was because they could no longer satisfy the evidential criteria, which at the time of my study required evidence of domestic abuse having occurred within two years of the legal aid application. This section will therefore explore the mothers' experiences of having, but also of not having, a solicitor.

6.4.1.1 Knowledge and Support

Solicitors possess knowledge of the law and of legal processes. M4 told me:

“the solicitor came to court with me and just sat next to me and explained the stuff to the judge...and made sure I understood it all.”

However, consistent with Mavis Maclean’s findings,¹²⁴ the solicitors in my study did not simply act as legal experts and advisors for the mothers, they were also active in their support of the mothers, including helping with matters not directly linked to the court hearings. Solicitor S2 explained how she supported domestic abuse victims through the family court process:

“you literally have to rebuild these poor broken souls... Sometimes they just want to run away... You have to become part of the repairing process that leads them to be financially ok...”

The majority of the mothers in my study consulted with a solicitor for advice at some point following their abusive relationship ending. This was either through the local domestic abuse one stop shop, which involved a relatively short meeting with a solicitor or para-legal for general advice, or through a formal appointment with a solicitor which generally resulted in the solicitor being instructed to represent the mother. M3 explained that the first thing she did following separation from her partner was instruct a solicitor. Her ex-partner had previously attempted to remove their daughter from school and the school had advised M3 that because he had parental responsibility they were unable to prevent him from removing the child without a prohibited steps order in place. She met with the solicitor once and although an order was not necessary while

¹²⁴ Barnett, *above n 37*

he was in prison, the meeting with the solicitor gave her confidence. She had followed this meeting with some emails, which she said allowed her to “run things past” the solicitor and gave her some understanding of what she could do to protect her child. M6 accessed the advice of a solicitor when she separated from her partner. As soon as she had found out she was pregnant, M6 realised she should end her controlling relationship. Her ex-partner began to harass her about the pregnancy, insisting “during the pregnancy that he would have a shared parenting order as soon as the baby was born”. She told me that “he wouldn’t leave me alone... I had a solicitor who said he didn’t have any rights until the baby was born anyway...” The solicitor sent the ex-partner a letter requesting that he cease harassing M6 about having contact with a child who was not yet born.

M7’s situation was somewhat more complex. Her child had been staying with his father, her abusive ex-partner, through a private arrangement whilst she was in hospital. It was agreed that their son’s welfare would be best promoted living with the father and his new partner for a short period while she was unable to take care of him. When she was discharged from hospital, she moved into her grandmother’s house, but the father refused to allow the child home with her. He applied to the court for residence, alleging sexual abuse and raising a concern that M7 was suffering from Munchausen’s Syndrome by Proxy. M7 instructed a solicitor as the respondent to this application. At the time she was particularly vulnerable, she suffered from ongoing mental health issues and she had difficulty understanding the complexities of the law. She told me that the solicitor was “the best person ever” and that she was “so glad I had her on my side.” M7 explained that the solicitor helped her to understand “how to play the game.” She said that the

solicitor “explained everything in layman’s terms” and she would “put down scenarios” to help her understand what was happening. In this way M7’s solicitor used her knowledge to help M7 navigate the bewildering situation she found herself in.

M8 was the respondent to an application from her daughter’s paternal grandparents. Her ex-partner had been charged, and was awaiting trial, for actual bodily harm to their baby. Initially, M8 had also been arrested, however the ex-partner admitted his guilt and charges were dropped against M8. The paternal grandparents had been caring for the baby whilst M8 was on bail and following the return of the child to M8 they had applied to the court for contact. M8 felt intimidated and worn down by this drawn out situation, which had begun a year before I interviewed her. However, she told me that her solicitor made her feel “really good” and that “she gave me confidence... She was truthful though...she told me, ‘this is gunna be hard’.” The solicitor gave her a mobile number to call at any time, and M8 told me she was given legal advice and support over the phone. She said she felt her relationship with her solicitor was unlike her relationship with any other professionals as it was “equal,” because the solicitor gave her choices and asked her opinion.

The court is a closed arena for most people who are not legally qualified. This fact was starkly evident to the mothers, who all expressed how they could not have navigated the process without the solicitor. This sentiment was also echoed by the solicitors, especially in terms of representing mothers who had been subjected to domestic abuse, which they identified as a specialism within the field of family law. S1 explained that clients:

“who have been subject to domestic violence, they need a lot of care and attention because of what they’ve been through, they are probably the ones that need more time, if that makes sense?”

“[T]hey have an element of trust issues...you need to build a rapport with them and make them feel confident and that they can trust you to deal with their case... You have to be a people’s person... If you’re not like that then you are probably going to struggle...because it’s such a personal...all the issues are very personal....”

S2 told me that:

“all firms [work with domestic abuse cases] to a certain extent but you will find in any firm there will be someone who is really good at it and it’s probably because they’re getting their hands dirty.”

S3 described how, when working with clients who are victims of domestic abuse, solicitors must be:

“very sensitive to the situation, and to a certain extent you have to be careful about some of the words you use, because you don’t want to offend mum....not to be blunt and as harsh because they are....very emotional...they are fed up of being

spoken to...by you know, the perpetrator...so you have to be softer...”

The solicitors therefore have the knowledge which the mother needs to be able to navigate the court process, and from the solicitors I spoke to, they have an understanding of the support needs of abused mothers involved in the process. These positive experiences of the mothers and positive attitudes of the solicitors resonate with the findings of Eekelaar, Maclean and Beinart’s¹²⁵ study which found that solicitors were active in their support of the many problems which newly separated parties faced.

M6 had some productive involvement with a solicitor during the court process, despite being a LiP. As discussed above, she had been estranged from her son’s father since she had first become pregnant. She had facilitated contact with the baby from birth, but this had been restricted to short periods of time due to her breast feeding. The father had requested overnight contact and M6 told me she had been prepared to do this, albeit incrementally to help her young son to adjust. However, the father had applied to the court for the child to stay overnight every weekend from Friday evening through to Monday morning. M6 told me that she had not been made aware of the level of contact he was requesting until she arrived at the court. The duty Cafcass officer met with M6 when she arrived at court, explored this request with her, and in turn explained to the applicant father’s solicitor that as a full-time worker M6 would not have any quality time with her son if the father was granted this level of weekly contact. The father’s solicitor agreed that the original request had been unreasonable given the circumstances and indicated to M6 that the father had not made her aware of M6’s employment status.

¹²⁵ Eekelaar, J, Maclean, M and Beinart, S *Family Lawyers: The Divorce Work of Solicitors* (2000)

The contact order was therefore made for fortnightly weekends and half of the school holidays. M6 told me that she was “glad he did have a solicitor there, because if he didn’t have a solicitor would I have been expected to have sat and spoken to him?” This is an example of proactive communication between the solicitor and the Cafcass officer, which enabled a more palatable outcome for M6.

The combination of juridical power and biopower which exists in the family court setting has the potential to raise the status of the solicitors to the detriment of the mothers’ autonomy. Yet, from my small study the mothers appeared to have been listened to, supported and given confidence by the practices of their solicitors. The mothers were either able to access the power of the law, or were afforded some protection from the law, with the support of the solicitor. The solicitor is unable to totally shield the mother from the force of biopower as the solicitor’s practices are also shaped by the norms of family law. For example, she has a legal duty to fulfil the LASPO requirements which include attendance at a MIAM if she is unable to categorise the mother as exempt, even if she believes that a MIAM would be detrimental to the mother, although her knowledge does enable her to exploit possible exemption clauses to the fullest extent on behalf of her client. The solicitor must also go through the process of applying for legal aid on behalf of her client, which involves obtaining evidence of domestic abuse. When the application is not successful the solicitor must turn the client away if she is unable to offer her services pro-bono and the if client is unable to pay for her services. In this way, the solicitors’ practices are also shaped by the biopolitical norms of family law. However, the support of the solicitor and the application of her knowledge when assisting the mother enables the mother to have some level of understanding of the

proceedings, whilst allowing her to feel a part of the process, rather than simply a bystander to, or a victim of, the family law proceedings. Family law purports to be gender neutral, however as discussed further below, the court's disregard for the mother's care of her children pre-separation and the minimisation of her experiences as an abused mother exacerbates the gendered forces. By reminding the court of the mother's experiences and framing these experiences in terms of the effects of that abuse on the children, the solicitor may influence the court in a way that goes some way to mitigating the nested gendered forces.

6.4.1.2 Consistency

If access to legal advice and representation promoted the mothers' autonomy, the inconsistent, punitive and confusing legal aid funding process highlighted the mothers' lack of control of their situation. M4's case is an example of just how confusing and protracted access to legal aid can be. M4 had initially instructed a solicitor to apply for a non-molestation order and a residence order. Her solicitor applied for legal aid to fund this, yet M4 was unable to secure evidence of domestic abuse which satisfied the criteria for legal aid and her application was rejected. There was a further incident which increased M4's risk of harm and entitled her to legal aid for an application for an emergency non-molestation order. M4 then approached a third solicitor for the residence order and possession of the non-molestation order entitled her to legal aid. Although M4 did finally obtain the non-molestation order and the residence order she had initially sought, it had taken a further violent incident against her and quite a few more months without protection before this was achieved. Furthermore, she felt confused and let down by the process. She did not understand why, despite being

unemployed with a small baby, she could not access legal aid because she could not acquire suitable evidence of her experiences of domestic abuse.

M6 had received some legal advice following her pregnancy, separation and her ex-partner harassing her. However, upon receipt of his application for contact she came to realise that she would not be entitled to legal aid because her earnings were above the means threshold. She was upset that the legal advice available for free at the domestic abuse one stop shop was only accessible during the day, as she worked full time, and said that “the only [solicitors] who would see me after work wanted £260 per hour... I didn’t have that money... I wasn’t entitled to any [help] because I work...” She had been advised previously that she would be entitled to some level of legal aid, however when she applied, this was not the case. M7 was not entitled to legal aid funding when responding to her ex-partner’s application for a residence order because she was unable to provide the requisite evidence of domestic abuse. She described her involvement with the family court as her “defending” herself and told me that her legal representation had cost her family around £8000. A lack of legal aid reduces the mother’s ability to harness the power of the law or protect herself from her ex-partner harnessing the law, and therefore diminishes her autonomy.

M9’s lack of control over her situation was evident when legal aid had previously been granted yet following changes to legislation was no longer available to her. M9’s family situation and her need for legal representation remained the same, yet changes to the law removed her access to a solicitor. M9 had been involved with the family law process for some time after separating from her ex-partner. The litigation ended for a short period, during which time the LASPO Act came into force. M9’s entitlement to legal aid

ended because the domestic abuse was perceived to have ended, along with the relationship, more than two years previously. M9 was the respondent to a high volume of applications made by her ex-partner. She told me that “I can’t afford a solicitor this time...they no longer do legal aid anymore so...” M9’s ex-partner was continuing to use the legal system as a way of controlling her. It is clear from her interview that the harassment and emotional abuse had not stopped, yet this post-separation emotional abuse was not accepted as evidence for legal aid. Under the regulations at the time, women were expected to have recovered from the abuse and be able to act as autonomous agents if the evidence available to them was more than two years old. Their experiences were supposed to be discarded, they were no longer categorised as “vulnerable” and they were required to face their abuser. As solicitor S2 explained:

“these women can be so shell shocked...that two years is not that long a time to recover....and there you are saying, ‘I know you’re not fully recovered, and I know that emotionally you are still on the floor, but can you just go and sit in a room with your bully please?’ It’s ludicrous...”

In addition to the inconsistency of legal aid availability, M6 experienced an inconsistency of response from two different professionals working within the court setting. When discussing how the child’s time would be split between her and her ex-partner, the Cafcass officer indicated that the father should have some responsibility for taking the child to appointments and friends’ birthday parties. His solicitor disagreed with this and argued that this was the mother’s role, as the child resided with her, and that the father “deserved to have quality time” with the child. This was despite the fact that M6 worked

full time, so also only spent weekends with the child. The contact order stipulated that the child would be with the father every other weekend and half of all school holidays. This indicates an inconsistency of approach to the responsibilities of the parents and resonates with Smart's argument that fathers who had "cared about" their children but had done less of the "caring for" seemed angry at the emotional and practical work that appeared suddenly to be required.¹²⁶

These inconsistent responses and experiences are not conducive to promoting the autonomy of anyone involved in the family court process. Consistency is especially important in a setting which is so daunting, as the parties do not know what to expect and are reliant on others to help them navigate their way through the unfamiliar processes of the family court.

6.4.1.3 Choice

As discussed above, the reduction in legal aid availability has removed the choice to access good legal representation from a large proportion of society. The mothers did not have a lot to say about access to legal aid, aside from telling me whether they had been entitled to funding or not. This may have been because, as lay people, they were unaware of the legislative changes and the wide-ranging implications of the restrictions. However, solicitors who work within the system were very aware of how the changes had impacted on the choices of their clients in accessing legal advice and representation. S1 explained that:

¹²⁶ Smart, above n 86 p.496

“the changes have...made it very difficult for people who actually need help to make it available to them...the criteria is so high that most likely they will not be funded... It’s so much more difficult now to get legal aid... Sometimes I see the clients who definitely really need the help but they can’t afford to pay me privately and there’s no legal aid.”

S2 told me what she thought about the legal aid cuts:

“I think the cuts are diabolical, a massive backward step. We’ve gone from being, almost like the ambulance at the top of the cliff, protecting people from the fall, to now waiting until they have splattered on the floor and picking up the remains. We have gone so far backwards....it was actually done to deliberately make it hard...”

S3 had noticed more people were attending the one stop shops to access free legal advice, since the legal aid cuts had been introduced. It would also appear from the mothers’ interviews that this provision was widely accessed, indicating some degree of choice being made available by the voluntary sector and individual lawyers, in response to the reduction in choice following LASPO.

As noted above, the LASPO Act has also led to a lack of choice as to whether mediation is the best route for the family, although in my study the requirement for mandatory attendance at a MIAM only affected M6. Her ex-partner applied to the court stating that M6 had refused to attend mediation. Her account of this was somewhat different. M6

told me that she had received a letter from his solicitor asking her to attend mediation. She said she was happy to do this but when she tried to call her local mediation organisation she was only ever able to leave answerphone messages. In the meantime, M6 received a letter from the court advising her that an application had been received by her ex-partner for contact with their son. The paperwork from the court indicated that she had refused mediation, and she received a letter from his solicitor saying that she had been “unreasonable.” She described how:

“his solicitor did this speech about how basically I’d refused him everything...I never allowed him any of it, none of which was true...it was all about, sort of how unreasonable I’d been to him.”

M6 felt that the court action had not been necessary and that she had agreed to all the contact that the father had requested. She said, “I have no idea what he said to [his solicitor]. All the court papers said I’d refused mediation, I’d refused him any contact.” Indeed, at court his request for a high level of contact had taken her by surprise as she believed they were working their way towards overnight contact, due to the child’s young age. M6 explained that although her ex-partner’s presence at court had intimidated her, she “couldn’t be bothered” to argue in court as she did not think anyone would listen to her.

I also spoke to the solicitors about their experiences of mediation and domestic abuse. Their responses were not consistent, indicating that the required process was not clear even to legal professionals. S1 indicated that she viewed mediation as a tick box exercise, saying:

“you will find with most mediators, that as soon as you tell them there’s an element of domestic abuse they will say they can’t do mediation, so that means, you know, we’ve attempted it, the mediator said no, we complied with what we are meant to do and then we can go to court proceedings...”

S2 appeared to approach mediation in a different way:

“I refer all my cases to mediation, I have no choice but to do so, I consider it a giant waste of time for my clients... I have women coming in here absolutely destroyed...felt the mediator let him say whatever he wanted, couldn’t get a word in edgeways, couldn’t back their own corner... From the 100 percent that I send there, 90 percent end up in court anyway.”

I asked S2 about the cases where there has previously been violence and she explained that the level of evidence required to prove domestic abuse along with the two-year time limit on the evidence of abuse, as it was at the time of the interview, meant that most of her clients were not able to bypass mediation. She thought it was “ludicrous...you get some really harsh deals come out of mediation...” S2’s experiences are consistent with Hunter’s argument that mediation processes do not ensure an even playing field,¹²⁷ and mediation in fact intensifies the power imbalances between the parties which are particularly prevalent in cases of domestic abuse. This was reflected in the empirical study carried out by Barlow et al. which found that participants who had

¹²⁷ Hunter, R “Consent in Violent Relationships” in Hunter, R and Cowan, S (eds) *Choice and Consent: Feminist Engagements with Law and Subjectivity* (2009) p.157

been subjected to domestic abuse were fearful of being in the same room as their ex-partner, they felt re-traumatised and came away from mediation with detrimental agreements.¹²⁸ As one participant in their study stated, mediation was “just another arena to be bullied in.”¹²⁹

In terms of costs, S2 argued that her clients “could end up laying out £200 or £300 on mediation, which [they] would be better off paying me to get [them] into court...” S3 believed that mediation could be positive, “for the right cases,” yet for some:

“forcing mediation causes people to become further entrenched in their positions, because they are not comfortable with the environment, they don’t want to be there.”

She went on to explain to me that for her fee-paying clients she was able to offer a “quasi-mediation” session, which entailed a mediation type approach with both parties in the room, however their solicitors were also there to guide and protect. This is not an option for clients in receipt of legal aid. She told me that:

“the concept of mediation is brilliant, but you have to tailor it to the individuals...whereas mediation in its true sense, it doesn’t provide for that flexibility... The legal profession has recognised that because we have collaborative solicitors...which encourages discussion rather than resorting to court... The legal profession is moving with what needs to be done...but legal aid doesn’t

¹²⁸ Barlow, A, Hunter, R, Smithson, J and Ewing, J *Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times* (2017)

¹²⁹ *Ibid* p.107

recognise collaborative... If it did I think a lot more cases could be taken out of court...”

These creative ideas around different mediation models are only available for clients who are able to fund them. Barlow et al. argue that after the LASPO Act was introduced, for those without the means to fund the legal representation required for the solicitor negotiation and collaborative law options, mediation was “left standing as the only form of out of court dispute resolution realistically available.”¹³⁰ Similarly, Maclean and Eekelaar state that the LASPO Act has led to more choice for people with sufficient finances to access legal representation, whilst leading to further reductions in choice for those who were already struggling to access legal support.¹³¹

In conclusion, the mothers were able to be an active part of the family law process through the use of a solicitor. The solicitor mitigated the juridical power nested in the court setting and although her practices were also structured by biopower, her support of the mother went some way to ensuring that her experiences of abuse were included in the proceedings. By contrast, the inconsistency and uncertainty of legal aid negated the mother’s autonomy by reducing her to the category of either deserving or undeserving of legal aid. The two mothers who were in court as LiPs had some experience of support from a legal professional, either in the case of M9 where in a previous hearing she had been eligible for legal aid, or in the case of M6 where she spoke about the advice she had indirectly received from her ex-partner’s solicitor. From my small sample the presence of solicitors in the family law process appears to be vital to

¹³⁰ *Ibid* p.58

¹³¹ Maclean, M and Eekelaar, J *Lawyers and Mediators: The Brave New World of Services for Separating Families* (2016)

ensure the mothers' autonomy is promoted. It may be the case that the solicitors I spoke to were particularly sympathetic to clients affected by domestic abuse, as they had been recruited for my study from domestic abuse one stop shops. This small sample may not therefore give a true picture of how solicitors generally respond to domestic abuse. A larger study with a wider recruitment process would give a clearer representation.

6.4.2 Child Welfare Professionals' Practices

As explained above, Cafcass officers prepare welfare reports for contested cases where there is no social services involvement with the family. When there is a social worker allocated to the family the welfare report is generally compiled by them, as they will already have access to the majority of the information required for the report. As Cafcass officers and family social workers are both qualified in social work and their roles in the court process are similar, this section will examine their practices together. The main difference between a family social worker and a Cafcass officer is that social workers tend to work with the family for a more protracted period and are involved with a range of issues that affect family life, whilst Cafcass officers work with the family for a shorter period, with a more targeted focus on the family court process.

6.4.2.1 Knowledge

M6 was the only mother who had been involved with a Cafcass officer during family proceedings. As described above, she had a positive experience where the Cafcass officer's knowledge of child welfare was utilised to negotiate a level of contact which M6 agreed was relatively reasonable. The other mothers had children who were subject to child protection processes, and their social workers were therefore required to be involved with the family proceedings. There were two areas of practice where the child

welfare professionals' knowledge was relied upon by the courts; in the welfare reports and more specifically in relation to the child contact recommendations.

As previously mentioned, M7's situation was complex. Social services had been involved with the family following allegations made against M7 by her ex-partner. M7 told me, "I've had social services in my life a whole year where I've been seeing [child] in a contact centre, I've done nothing wrong..." The family's allocated social worker was required to compile a welfare report for the court. M7 told me that the social worker asked her questions for this report, yet the information was all "twisted around" compared with what she had said to her. The social worker was also required by the court to spend a full day with M7 and her son, and the feedback from this eight-hour observed contact was included in the welfare report. The social worker told me that an observed contact of this length was "unusual" and admitted that the situation made observation "artificial." She explained that it had been requested by the court because the ex-partner had raised a concern that M7 did not play with the child during contact. The social worker was therefore required by the courts to see if M7 "could keep up the pace for eight hours." This unusual practice was to appease the concerns of an abusive ex-partner who was trying to block contact between M7 and their child. In her interview with me, the social worker had questioned M7's experiences of domestic abuse, arguing that there had been "no evidence" of this. She had also questioned a psychiatrist's report regarding M7 displaying symptoms of Post-Traumatic Stress Disorder (PTSD) which she said could not be relied upon as the diagnosis was "only based on what M7 had told the psychiatrist" about her symptoms. The social worker's opinions and recommendations in the welfare report would have been influenced by her scepticism

of M7's experience, yet the welfare report was accepted by the court as expert knowledge of what was in the child's best interests.

As discussed above, social services were involved with M8 following injuries to her three-month old baby. Following the criminal case against M8 being dropped, social services continued their involvement through a public family law case, where they attempted to secure an Emergency Protection Order as they argued that M8 had failed to protect the baby from her father. This application was unsuccessful, and the children were returned to M8. The paternal grandparents then applied for, and were awarded, a contact order which was fully supported by the social worker. M8 believed the social worker to be biased in favour of the grandparents due to their medical professions. She told me, "I think to this day the grandparents know more about the court case than me... I think it's their careers that have got them so far..." She told me that the social worker would:

"say one thing to my face and write something else down on her report...she told me to my face, 'oh you're a good mum' and gone to court and said, 'she's the worst mum.' I don't trust her."

The social worker's recommendations to the court, which were presented in the welfare report, formed the basis of the contact order which M8 felt was unfair. During her interview, whilst reflecting on the case, the social worker admitted to me that she had been judgemental whilst dealing with M8. This judgemental and biased behaviour was noticed by M8 yet was presented to the court as an expert opinion and structured the outcome of the hearing.

M9's family court situation had been progressing for some time when social services became involved with the family. At the time of the interview there had been a gap in court proceedings whilst social services took control of the contact situation. When I interviewed M9, the social worker had very recently advised her she would be raising a concern about her current partner's care of her child in the welfare report. M9 was concerned about the social worker's judgemental approach to her current relationship. Indeed, during my interview with M9's social worker, she spoke in a very judgemental way about M9 which indicates that M9's concerns about her social worker's impartiality may have been reasonable. As discussed in chapter four, in the relationship between the mother and the social worker, the "knowledge" of the social worker is given greater value because they are recognised as the experts on the family. In the court setting, the social worker's report forms a central part of the judge's decision making, yet these social workers are not neutral, because they have been involved with the mothers and their families for some time prior to the court hearing. As previously discussed, their domestic abuse knowledge is poor, yet within the family court setting their judgemental opinions are given credibility, as they are recognised as the experts on the child's welfare. Their practice exacerbates the biopower which is present throughout the family law process, which is in turn strengthened by the juridical power which is nested within the court setting.

As discussed above, societal perceptions of the family structure court decisions, which in turn reinforce societal perceptions. This can be identified in the practices of the social workers in relation to contact between the abusive fathers and their children. M7's child lived with his father, and her social worker told me:

“[child] is absolutely obsessed with mum, obsessed in a good way...he adores his mum. He wanted to live with his mum... I believe that it’s better for [child] to stay with...his father, and the judge agreed with me.”

When asked to elaborate on why this was the case, she said it was because the child was already living with the father through a short-term private arrangement and as the court could find no harm in him living there, he should continue to live there. She said this was not a reflection on M7’s care. The perception was that the child’s best interest was fulfilled by leaving him living with the father, which would reduce the upheaval of a move back to his mother’s house. The child had thought that the stay at his father’s house was temporary and he had continuously expressed a desire to live back with his mother. M7 described how he was distraught every week when he had to return to his father’s house, yet the social worker stated in her interview that she did not want to upset the status quo. Both M7 and her social worker told me that the child was waiting until he was ten, so he could “go in front of the judge” and tell them he wants to live with his mum. This situation reflects the findings in Macdonald’s study of the child’s wishes being disregarded¹³² and in their place a child welfare expert’s perception of what is best for the child is prioritised.

In M8’s case, overnight contact had been awarded to the paternal grandparents, despite the risk of the abusive father being present. In her welfare report the social worker supported a high level of contact with the grandparents and recommended supervised contact between the father and the child to be managed by the grandparents. M8 had

¹³² Macdonald, above n 74 pp.832-852

raised her concerns about this recommendation with the social worker, who said it was not possible to prove that the son would visit his parents' home, and that the grandparents "could be trusted" to protect the baby. M8 indicated that her ex-partner was staying at his parents' house, that he had been attending the court hearings with them, and that they were paying for his treatment with a psychiatrist. During her interview, the social worker also told me that she had witnessed M8's ex-partner arguing with his parents, and that she had intervened and told him "you shouldn't be talking to your mum like that." She told me that he "really came across as rude, and very controlling as well..." Despite acknowledging the domestic abuse within the relationship between M8 and the father and witnessing the abusive behaviour of the father towards his own parents, the social worker did not link this behaviour with the contact she was recommending. This social worker's practice highlights what Barnett argues is the "ideological separation of contact and domestic violence, [which is] driven by the pervasive assumption that post-separation contact invariably benefits children."¹³³ The social worker was ensuring that contact continued regardless of the abusive behaviour of the father. As described in chapter four, she simultaneously laid the blame for any abuse that the children had witnessed firmly at M8's door, by stating that she hoped M8 would not end up in "another relationship which exposes the children to violence." The irony is that M8's child *is* likely to witness domestic abuse in the future, perpetuated by her father against her grandmother, during contact which was supported by the social worker and ordered by the court. This insistence on contact despite the risks highlights

¹³³ Barnett, above n 118 p.442

the social worker's lack of knowledge of domestic abuse, yet she is afforded the status of child welfare expert within the court setting.

When speaking to me in general about child contact with non-resident fathers, M7's social worker explained that if a "father perpetrates domestic abuse only towards the mum" she believed contact would be beneficial for the child if the mother was not present. This belief frames the mother as the problem; if she is not involved with the contact, the father will not be abusive. The importance of the pre-separation experiences of the mother and the children are also minimised. The children may have witnessed the violence, or may have been directly targeted, whilst the mother is expected to send her children to spend time with her abuser. This social worker's views are consistent with Macdonald's findings that "contact is very much presented as the overriding goal within s.7 recommendations to the court."¹³⁴ The social worker's "knowledge" of child welfare leads them to believe that post-separation contact is beneficial in most cases; this is in line with the biopolitical policy of "separated but continuing" which permeates the social workers' practice.

As examined in detail in chapter four, social workers are bestowed with the status of experts on the family, yet their practice indicated that they lacked the knowledge to respond appropriately to mothers affected by domestic abuse. Due to their involvement in the family court system, this practice is carried over into the court setting, and this is keenly felt by the mothers who are navigating the family law process. M9 told me, "I know judges listen to social services and Cafcass officers over parents, I know that. I have been to court quite a few times, so I know that." S2 did not believe that social workers

¹³⁴ Macdonald, above n 132 p.844

had *any* understanding of domestic abuse and that this lack of expert knowledge negatively affected the mothers' situation in court. She candidly said:

"I think that social workers are the devil incarnate in most of these cases, because all they do is tell the women off for having been in a domestically abusive relationship... Because they're having a breakdown, that is the time when social workers are in there putting the stick in... And it doesn't matter if [the father] was the aggressor, he will get the children placed with him..."

In terms of the social workers' expertise around child welfare, S2 told me:

"they will say, 'it's because we have to think about the children', but you're not thinking about the children, not really, because that poor woman, if she doesn't come back [mentally], those children will have lost, maybe not in physical presence, they will have lost their mother. They will create something that is so broken that she presents as nothing to the children. And *that* is the power of the social worker."

These practices exacerbated the biopower present in the court setting and reduced the mothers' opportunities to exercise their autonomy. The nested presence of juridical power strengthened the biopower of the social workers and the mothers' views were disregarded in favour of those of the child welfare professionals who were tasked with deciding what was best for the children.

6.4.3 Judicial Practices

Just as the mothers' relationship with the police was not confined to one specific police officer, the mothers may have had experience of various judges. Also, throughout the interviews it was clear that when the mothers spoke about "the court" they were referring to the judges who presided over their cases. To the mothers, the judge is recognised as "the court", therefore this section will examine the mothers' experiences of the court as an institution, and its practices, and at times more specifically their experiences of individual judges. The family law paperwork I was able to obtain was limited as I lost contact with M7 and M8 prior to obtaining their paperwork. This section will be predominantly based upon the mothers' interviews, and the full case study of M9, whose paperwork I was able to obtain.

Before the mothers' experiences are examined below, it is important to briefly discuss how PD12J operates in practice and therefore to set the context within which the mothers' experiences were located.

As has been described throughout this chapter, the mothers' experiences of the family court are set against a backdrop of a strong presumption of contact, along with an overarching pressure to settle outside of the court. The mother may be judged as being hostile, or brainwashing her child to alienate their father, if she refuses the contact proposed by the father. The strength of the presumption that contact is best in most cases structures how PD12J is followed in actual practice.¹³⁵ In order for the court to follow PD12J they first need to be made aware of the presence of abusive behaviour in the relationship. It can be difficult for a LiP to know when and how to disclose this

¹³⁵ Hunter, R and Barnett, A *Fact-Finding Hearings and the Implementation of the Presidents Practice Direction: Residence and Contact Orders: Domestic Violence and Harm* A Report to the Family Justice Council p.73

information. As mentioned above, M6 did not think anyone would believe her if she brought up her ex-partner's controlling behaviour, so she did not raise this as an issue. However, those who do have solicitors may also be advised by them not to raise the issue of domestic abuse. Forty percent of solicitors participating in Hunter and Barnett's study said that they may advise against raising the issue of domestic abuse, for various reasons, including if the abuse was historic, if it was deemed trivial or not serious, or if the couple had rekindled their relationship following the abuse. The solicitors appear to be placing themselves in a position where they feel able to judge whether the abuse could affect the child contact moving forwards. They indicated that if raising the issue of domestic abuse could damage their client's credibility they would advise them not to proceed with the allegation.¹³⁶ Concerns about domestic abuse may also arise from the Cafcass safeguarding checks, which should be completed in time for the First Hearing Dispute Resolution Appointment (FHDR). If the safeguarding checks are not completed by this time, the hearing should be adjourned,¹³⁷ however Hunter and Barnett found that this was not always the case and some FHDRAs went ahead without the results of the safeguarding checks.¹³⁸

Furthermore, following domestic abuse being raised as an issue, fact-finding hearings are not always held. For example Birchall and Choudhry found that 29 percent of cases did not include a fact-finding hearing.¹³⁹ Whilst Women's Aid and Cafcass found that fact-finding hearings were "rare" and in their study, eighty-nine percent of cases where

¹³⁶ *ibid* p.33

¹³⁷ PD12J, Paragraph 12

¹³⁸ Hunter and Barnett, above n.135 p.33

¹³⁹ Birchall, J and Choudhry, S "What About my Right not to be Abused?" *Domestic Abuse, Human Rights and the Family Courts* (2018) p.26

domestic abuse had been alleged resulted in an order being made at the first hearing by consent.¹⁴⁰ Barnett argues that:

“apparent willingness of family lawyers to request fact-funding hearings and of courts to hold them lies in the very narrow circumstances in which domestic violence is perceived by judges and family lawyers, particularly barristers, to be ‘relevant’ to contact.”¹⁴¹

Layers of subjectivity are added to the process, as the solicitor determines whether it is relevant to request a fact-finding hearing, and then the judge determines if it is relevant to grant this request. Furthermore, the invisibility of coercive control renders the finding of abuse potentially difficult, with little evidence of what goes on behind closed doors. Even if found to have occurred, “historic” or non-physically violent abuse may not be deemed relevant to the issue of contact.¹⁴² Participants in the Hunter and Barnett study reported that direct contact was most commonly ordered following findings of fact, along with requirements for expert risk assessments of the fathers, and the fathers’ attendance at perpetrator programmes or anger management sessions.¹⁴³ The presumption of contact appears to outweigh the risk of harm due to ongoing domestic abuse and Barnett found that orders refusing contact were very rare.¹⁴⁴ This finding was echoed in Women’s Aid’s report into the deaths of nineteen children who had been killed by their abusive fathers in circumstances related to child contact. In one of the

¹⁴⁰ Cafcass and Women’s Aid, above n 73 p.16

¹⁴¹ Barnett, above n 13 p.62

¹⁴² Birchall and Choudhry, above n 139 p.25 also, Women’s Aid *Nineteen Child Homicides* (2016) p.27

¹⁴³ Hunter and Barnett, above n 135 pp.47-54

¹⁴⁴ Barnett, above n 13 p.68

Women's Aid cases the family court granted a father unsupervised contact with his children despite the social worker being too afraid of his violent behaviour to meet him in his home.¹⁴⁵ In the 142 domestic homicide cases examined by Stanley et al. 55 of the cases had children within the family, and child contact arrangements (both formal and informal) "surfaced as a theme throughout."¹⁴⁶ The mothers' in my study had experiences of the court practices which were consistent with the concerns raised in all of the research described above.

6.4.3.1 Knowledge

As discussed above, the child welfare professionals prepared welfare reports for the court which detailed what residence and contact arrangements they believed were in the child's best interest. It was not possible to ascertain from my study to what extent the judges acted upon the child welfare recommendations as I did not obtain court papers for some of the mothers, and those which I did obtain contained only orders without written judgments or judicial reasoning.

M7's ex-partner obtained an order from the court which stated that their son should live with him, despite there being no concerns about M7's ability to parent the child and the child making it clear that he wanted to live with his mother. M7 told me that her ex-partner continued to behave in a manner which caused her distress, and he utilised the contact arrangement to continue to control her. For example, he insisted that she ask his permission, two weeks in advance, if she wanted to stay at another family member's house during her weekend contact. He also insisted that she return the child on a Sunday

¹⁴⁵ Women's Aid *Nineteen Child Homicides* (2016) p.24

¹⁴⁶ Stanley, N, Chantler, K and Robbins, R "Children and Domestic Homicide" *The British Journal of Social Work* (2018) p.8

wearing his dirty school uniform from the Friday. Without M7's court files it is not possible to determine whether her social worker raised the issue of domestic abuse, whether there was a fact-finding hearing, whether facts were found about domestic abuse or whether the court determined that they were relevant to the issue of contact. However, M7 did tell me that the father had made allegations against her and whilst her solicitor prepared for the hearing the court had ordered supervised contact in a contact centre. This would indicate that the hearing, which she subsequently spoke about "winning" and where her solicitor proved the father's allegations to be false, may have been fact-finding in respect of her alleged abuse of the child. If M7 made counter-allegations of domestic abuse, they did not ultimately result in the child being returned to her. However, as discussed in chapter four, her social worker did not accept M7's account of the father's pre-separation behaviour. And presumably, in the absence of police involvement, the court would have relied on the social worker's opinion to determine the occurrence of domestic abuse and any risk which the child may face in the future from the father. During her interview the social worker reflected on the case and acknowledged that the contact appeared to be a continuation of the father's controlling behaviour, yet the decision was made by the court for the child to remain with his father. This indicates either a lack of understanding of the ongoing nature of coercive control, or a minimisation of the ongoing effects of coercion on the mother and (more relevantly) on the child. It also indicates how difficult it is for the court to identify the dynamics of coercive control. This is consistent with the difficulties the police also encounter, discussed in chapter five. The requirement to identify not just how the father behaves, but how the mother has had to adapt her life because of his behaviour should translate into the court setting when attempting to identify coercive control.

M8's ex-partner had admitted to harming their baby when she was three months old, yet the court ordered contact between the father and child, to be supervised by the paternal grandparents. M8 told me that the judge had suggested that the grandparents had been granted the same level of contact that the father would have been granted, had he not been violent to the child. This indicates that the presumption of contact with the non-resident father is so strong that it should be transferred rather than lost. Whilst in court, M8 raised concerns about the presence of the abusive father, the grandparents' ability to supervise the contact and also the fact that the court had insisted on passing M8's address to the grandparents. She told me that she did not want the grandparents to know her new address as she believed they would pass this to their son. This was a concern which she had raised with the court. M8 perceived that the judge did not appear to share her concerns, again possibly indicating the minimisation of the ongoing risk of harm from the abuser. Paradoxically, M8 told me that her non-molestation order had been granted because:

“the judge was worried about the risk, so the judge gave [ex-partner] the [non-molestation order] without me even asking for it, the judge felt like it was the best idea to protect the children.”

I was unable to determine if this was the same judge who granted the grandparents' contact order. However, from M8's account it seemed that neither the social worker nor the solicitor had indicated a need for the protective order. The judge's recognition of the risk involved with the ex-partner being in contact with M8 does indicate a level of understanding of post-separation abuse. However, it is also the case that whilst this judge prohibited contact between the ex-partner and M8, the court did agree to contact

between the ex-partner and the child, during the child's contact with the grandparents. This signals that the court did not consider the ex-partner to be a danger to the children if M8 was not around. At the time of M8's involvement with the family court, PD12J called for the court to explain how they arrived at the decision to allow contact when there were findings of domestic abuse.¹⁴⁷ I was unable to establish whether domestic abuse was found by the court to be a factor in the relationship between M8 and the child's father. Presumably the court found that it was in the child's best interest to have continued involvement with her paternal grandparents, indeed this was something which the social worker promoted.

M9 explained that during the many years of family litigation, her ex-partner had used the court to continue to control her. M9 described how the court proceedings had affected her:

"After six years of having to deal with [ex-partner] in the court situation...having my son come home every weekend absolutely distraught, emotionally I was broken, I just couldn't cope anymore."

Despite his numerous breaches of both undertakings and court orders, the court never ordered no contact. The breaches included allowing the child to have contact with a relative who had been arrested for a child sexual abuse allegation, harassing family members despite having an injunction prohibiting him from contacting them and being arrested for cannabis use despite an undertaking that he would not use drugs. The judge

¹⁴⁷ Paragraph 40

had also granted an order stipulating that M9 must do the handover alone as the ex-partner had professed to be afraid of her new partner. In M9's social services paperwork there is evidence of social worker recommendations which correspond with the content of the court orders, including the requirement for attendance at a SPIP course, specific handover arrangements and supervised contact. The social worker's welfare report details many examples of the non-resident father's controlling behaviours and how he had brought the mother back to court thirty times. He had refused to engage with the social worker's assessment and displayed a lack of understanding of the detrimental effect of protracted litigation on his child. The social worker evidences death threats made by the father to the mother and her new partner, which the police were aware of. There is mention of a planned move, which would have meant the mother lived closer to where the father lived, and which she was advised not to go ahead with due to the risk the father posed to the family. There is evidence of the father consuming cannabis whilst driving with the child in the car, which the father had dismissed as "irrelevant." It is recorded that the child had been repeatedly told by his father that he would be reconciling with his mother, that the father hated the new partner and that he told the child to misbehave as then he would be allowed to see the father more. The social worker recorded in the report that the child was frightened by what his father said to him at contact. The father had told the social worker that he blamed M9 for the impact of the court process upon the child, and that he fully justified his level of involvement with the court. The social worker's report makes it abundantly clear that the father's behaviour was negatively impacting on the child. Despite this, and as examined in detail in chapter four, the social workers appeared to lay the blame for the ongoing family proceedings equally on the mother and the father. Within M9's paperwork there are

letters and text messages from the father professing to still love M9 and requesting that she reconcile with him. It appears quite evident that he was unable to separate M9 from his child, and this indicates that the continued pursuit of contact may have been due to his unresolved feelings for M9 rather than his desire to be a good father to the child. The court continued to order contact, and although this was ordered to be supervised for short periods of time, contact always returned to overnight weekends, facilitated by the mother. As M9 explained, she had no choice but to continue with the contact through fear of the father taking her back to court for a breach.

All of the mothers' experiences described above corroborate Wallbank's argument that because of the strength of the presumption in favour of contact, women are easily constructed as acting on their own selfish needs if they are not wholly supportive of contact. Despite the fathers' proven violence, contact was enforced by the courts and mothers were punished for attempting to protect their children.¹⁴⁸ The judges' apparent lack of knowledge of the impacts of domestic abuse and the fathers' continuing control of the mothers and children enables the presumption of contact to trump their safety. The information about ongoing risk of harm, and the knowledge of the dynamics of post-separation control was not passed to the judges by the social workers, and it would appear that the judges did not seem to have insight of their own to act upon. Aside from the one judge who instigated and granted M8 the non-molestation order, there was no evidence that any other judges identified any concerns for the fathers' ongoing coercively controlling behaviour.

¹⁴⁸ Wallbank, above n 94 p.197

6.4.3.2 Choice

The mothers felt coerced into being involved in the court process. They were also very aware that following the abuser's application to court they had no choice but to follow the process through. The mothers identified that the court proceedings were controlling their lives, having a detrimental effect on their wellbeing and negatively affecting their children. The mothers also indicated that they felt a high level of expectation to adhere to the court's requirements, which appeared to be disproportionate to that experienced by the fathers.

M6 told me that:

“you're just sent a letter from the court...you're just told you've got this hearing to attend to, you've got to send all the paperwork back by a certain date...”

She told me that once she was there “there was nothing to be disagreed with.... I just had to agree.” She said that she had no choice but to attend and that “the whole thing was just to get a stamp on a piece of paper.” She did not feel able to speak in court and she believed that “the outcome was going to be the same really whatever happened...” M4 had resisted going to court for some time and had felt coerced into the process by her social worker, who had made M4's application for a residence order and a non-molestation order a condition of her child protection plan. M7 described how her ex was “still chucking all these things, he's still writing letters, he's still trying to deny me access” and she had no choice but to respond to these ongoing applications. M9 told me that “anything that he thought he could have us for, he would just stick court papers in...

We'd go...we'd attend...most of it was chucked out of court." Yet they were still obliged to attend court in response to the ex-partner's applications.

The mothers were also very aware that once there was a court order in place, they would be expected to abide by it. An example of how fathers can use the court system to continue control following separation can be seen in M9's particularly extreme situation. Her son's father, her partner and M9 all had made undertakings in respect of child contact, not to "pester or harass" one another. M9 was required to conduct handovers with her son's father alone, and her new partner was required to stay in his motor vehicle at a stipulated distance from the handover. Ten months after this court order was put in place, the father complained to the court of a breach of the undertakings. M9's court statement indicates that she and her partner had arrived at the handover location (a family member's home) early so that they could be inside the house before the father arrived. The father was already at the location, sitting in his car and the child was making his way inside the home with the family member. M9 and her partner got out of their vehicle to follow the child indoors, at which point the father got out of his car and confronted M9's partner, blocking his path and words were exchanged. The father subsequently applied to the court to have M9 and her partner committed to prison for breach of the undertakings. M9's statement indicated that the father had put himself in the position by getting out of his car. There followed a two-day hearing, for which M9 and her partner were billed £2000, and which resulted in her partner being handed a three-month sentence which was suspended for twelve months. The partner had accepted a police caution for verbal abuse, thereby admitting the breach. Following the court case, M9's solicitor advised her in writing that he:

“anticipates [father] will make life incredibly difficult to try and get you into a position where you will breach the undertaking and therefore be committed to prison... You need to ensure that you prevent the situation occurring where you could be manipulated into a breach of the undertaking or the current order.”

Soon after this there was an email from the father where he indicated he still loved M9 and explained how he had influenced the judge to keep her and her partner out of prison. This is an indication that the father used the breach of the undertaking to illustrate to M9 how powerful he was and that she should fear his ability to detrimentally affect her life. This is clearly ongoing control of M9 and her family. M9 told me she realised she had little choice but to stick rigidly to future court orders through fear of further litigation.

These are examples of how juridical power structures the mothers' relationships in the court setting and how the mothers are coerced into responding to the applications, despite knowing that their ex-partners are using the court system to continue to control them. The fathers' use of juridical power in this setting is consistent with their use of juridical power within all of the settings examined in this thesis – child protection, policing and the family law process – to control the mother.

The mothers perceived that the abuser was afforded more choice than they were about the conditions in the contact orders. They felt these choices were extended to the abuser over and above their and their children's choices. The presumption of contact was perceived by the mothers as promoting the fathers' rights over their children's

wishes. M6 felt this most keenly as she did not have a solicitor to absorb the impact of the court's power. She told me:

“actually, through all of it, never once has [ex-partner] said ‘what’s best for [son]?’ It’s about what he wants... He wasn’t thinking about [son] at all in the end, it’s about what he wanted and that’s what it’s always been.”

She also felt that her involvement had been superfluous to the proceedings, she told me:

“I don’t think, I don’t feel, through the whole process that anyone actually, really asked for *my* opinion.... It was all about how unreasonable I’d been to [ex-partner] I felt like...nobody really knows what’s gone on.... It’s not about [son], it’s about [ex-partner’s] entitlements.”

As Van Kreiken argues “the child’s right to contact is effectively the father’s right to contact.”¹⁴⁹ M6 agreed with this sentiment, stating that:

“they’re all just there for one person, [ex-partner]...I don’t think it’s very fair from [son’s] point of view... Until he’s old enough....I can’t do anything about it...”

As introduced in earlier chapters, mothers are expected to undertake the majority of unpaid care within the home. This gendered care work reduces the mother’s choices

¹⁴⁹ Van Krieken, above n 62 p.36

outside of the home. Yet the lack of recognition of the role she played pre-separation and which she continues to play post-separation renders her work invisible.¹⁵⁰ As Wallbank explains, “A more vigorous approach to the father’s quality of care might help to understand, at least in some cases, why women are hostile to it.”¹⁵¹ Tronto makes a distinction between “caring for” and “caring about.”¹⁵² And Smart argues that there is a moral value attached to “caring about” a person, yet there is no such value assigned to the physical work of caring.¹⁵³ This lack of understanding of the caring role of the mother may go some way to explaining why mothers may appear hostile to contact with the father following separation.¹⁵⁴ The mother finds herself with no “valid language” available to express what are actually her “moral claims” based on the work of caring for her children pre-separation.¹⁵⁵ Mothers who may have sacrificed opportunities outside of the home in order to physically care for their children prior to separation, may be faced with a father who is exerting his rights to contact with a child he may have had very little involvement with prior to separation. Van Krieken acknowledges some fathers appear to wait until separation to discover a relationship with their children.¹⁵⁶ The fathers seem to have the luxury of choice in deciding to pursue a relationship, whilst the mothers’ relationships with their children are expected and based upon well-established norms of motherhood. This issue of the mother’s pre-separation experience shaping her responses in the family law process is understandably magnified when the applicant father has been violent pre-separation. Julie Wallbank argues that during the family law

¹⁵⁰ Smart, above n 86 page 496

¹⁵¹ Wallbank, above n 94 p.212

¹⁵² Tronto, J “Women and Caring: What Can Feminists Learn about Morality from Caring” in Jaggar, A and Bordo, S *Gender/Body/Knowledge* (1989) pp.25-40

¹⁵³ Smart, above n 86 (1991)

¹⁵⁴ Barnett, above n 79 p.139

¹⁵⁵ Smart, above n 86 (1991)

¹⁵⁶ Van Krieken, above n 62 pp.25-48

process “it is necessary for the courts to consider the pattern of care that existed before the relationship breakdown.”¹⁵⁷

M7 believed that her son wanted to live with her and that he had not been given this choice during the family proceedings. She also indicated that she believed the proceedings to be all about her ex-partner. M8 told me that she believed her child’s grandparents’ choices had been respected over her and her child’s. She said that what is best for the child is not taken into consideration and she “felt like sometimes it’s what is best for the adults.” She explained that:

“quite a lot of it was about [the grandparents] and I felt it should have been more about [the child’s] needs, rather than their needs.... When the courts say it’s about the child, *actually* [be] about the child, and stick to that, don’t make it about the adults... Kids have no say.”

There is a tension between the rights of the child, which appear to translate as the rights of the non-resident father to see the child, and the welfare of the child, which the mother appears to prioritise. Birchall and Choudhry uncovered:

“a glaring gender gap in the way rights are used by applicants, with non-abusive parents thinking ‘child first,’ while the focus of perpetrators of abuse remains ‘me first’.”¹⁵⁸

The court’s preferred family model of separate but continuing was identified by the mothers in my study as actually being the courts favouring their ex-partner. In summary,

¹⁵⁷ Wallbank, above n 94 p.207

¹⁵⁸ Birchall and Choudhry, above n 139 p.3

the fact that the mother was involved in the court process was due to the father choosing to start the process. Once involved in the process the mother's choices are reduced as she must follow the resulting court order. The choices available to the mothers and fathers pre and post-separation are gendered, and this is exacerbated by the family court system where the father is perceived by the mother as having more choices throughout the whole process.

6.4.3.3 Consistency

The mothers sensed that inconsistent expectations were placed on them and their ex-partners by the courts, in terms of the level of care each should provide for their children. M6 told me, "I'm paying all the childcare...I'm paying all the nappies...he always uses them." She went on to say "I send [son] with clothes, I send him with everything" yet the father had reduced his child support payments to her following the child arrangements order granting him fortnightly weekend contact. She also explained that the father had resisted taking their son to the dentist during his contact in the school holidays, which led to him missing the dentist appointment. M6's experience is consistent with Tronto's distinction between "caring about" and "caring for"¹⁵⁹ where the ex-partner wants to spend time with the son yet is not quite prepared to care for him in the sense of providing him with nappies and clothes or taking him to mundane yet necessary routine appointments. M6's perception was that her role as a mother was to undertake the invisible care work which would keep her son healthy, also recognised as promoting the child's welfare, and then facilitate contact with the father, which is the right of the father to have as his quality time with the child. Again, the mother

¹⁵⁹ Tronto, above n 148

experiences a tension between the welfare of the child and the rights of the father. M7 told me how her ex-partner did not get involved with the care of their son during their relationship, and in fact as was discussed in chapter three, he was abusive when their son was present. She told me that her ex-partner “says all these things and acts as if he was helping, he wasn’t. It’s my word against his, I’ve got no proof.” M7’s frustration was that the courts did not take into account how her ex-partner had behaved when he was living with her and the child, and how he was now stating that he had been a good father and deserved to have the care of the child because of this. This is consistent with Van Krieken’s observation that some fathers wait until the point of separation to start a relationship with their children.¹⁶⁰

The mothers also experienced an inconsistent sense of obligation to abide by the court orders. For example, despite numerous conditions and undertakings being breached by M9’s ex-partner, her court files indicated that he had never been reprimanded beyond being spoken to by the family’s social worker.¹⁶¹ Yet, M9 perceived that the onus of complying with the court’s orders rested heavily on her. For example, following the most recent application from the father for contact, M9 had been ordered to provide details of holidays planned for the year, by 1st January each year. When she had made a request for the planned contact periods during the summer to be amended to allow for a last-minute holiday deal for the family, it was refused by the father. M9 was very aware of the need to abide by the court order following the suspended sentence imposed on her ex-partner for the breach of conditions at handover. M9 told me that “everything had

¹⁶⁰ Van Krieken, above n 62 pp.25-48

¹⁶¹ A discussion of this can be found in chapter four

to be put down on paper so there can't be any arguments." This led to a lack of flexibility in their family life, which was due to the behaviour of her ex-partner, yet impacted on M9 rather than on him.

6.5 Conclusion

The norms of a "good post separation family" which include good communication, parental equality, and good quality contact between the child and the non-resident parent are woven into family law. The legislative measures discussed above have biopolitical purposes and are intended to improve the development of children by encouraging the model of the traditional family, even after separation. This is consistent with expert opinion which states that children's development is best promoted by the involvement of both parents.

During private family law proceedings, the mother is faced with conflicting expectations from a variety of government policies which directly affect her. The government's response to domestic abuse expects her to end her relationship and places a duty on agencies to support her to do so, yet the family law response is to encourage the couple to communicate in order to continue to raise their children together after separation. This conflict is particularly evident when the relationship between the mother and the social worker is examined, as seen in chapter four and also in this chapter. The social worker's priority is to reduce harm to the children, and they encourage mothers to separate from their abusers to protect the children. Yet when the social worker is involved in the family courts, it has been evident from this study that they promote contact with the father. The mother faces different expectations from the same professional depending on the setting of the relationship.

In private family law cases the mothers were reliant on their solicitors. The mothers who had legal representation were positive about the support from the solicitor, who they indicated had effectively represented their voices in court. By contrast, the law appeared inaccessible to the mothers with no entitlement to legal aid, and those who did attend court as litigants in person did not feel their voices were heard.

The family law response to an abused mother is not centred on her experiences of the abuse, and does not take into account her autonomy, aside from expecting her to exercise it when mediating or negotiating at court with her abuser. Her experiences of abuse are neither taken into account, nor given any value when they are raised in court. The courts do not appear to recognise a link between these experiences and the ongoing contact that they encourage her and her children to have with the perpetrator of that abuse. The family court process is not expected to promote the mother's autonomy, as it is centred on the welfare of the child, however as the main caregiver the mother's welfare is closely linked to that of the child, therefore should hold some importance in proceedings. The proper implementation of PD12J may have improved the mothers' experiences of court, especially those of M8 and M9 where there were admissions and evidence of abuse. The expectation of the court to place some importance on the mothers' experiences of domestic abuse may have promoted her autonomy in such a way that the child's welfare would also be promoted.

The biopower within the family courts is strengthened by juridical power, which is present in its strongest form in the court setting. In turn, the juridical power is given credibility by the presence of biopower and the use of expertise. The court grants orders which are coercive in nature and structure the family form because they are considered

to be in the best interest of the child, this best interest having been determined by experts in child welfare. There appears to be some conflict between rights and welfare, where the fathers apply to the court to assert their rights of contact with their child, and what they deem as their child's rights to see them; and where the mothers speak about their child's welfare. The mothers' voices were side-lined in place of the "separated but continuing" family model which places ongoing contact as a priority above the mothers' (and children's) experiences of domestic abuse. The mother is treated as an autonomous actor throughout the family court process yet, her autonomy is not taken into account, let alone promoted during the process.

Chapter Seven – Conclusion

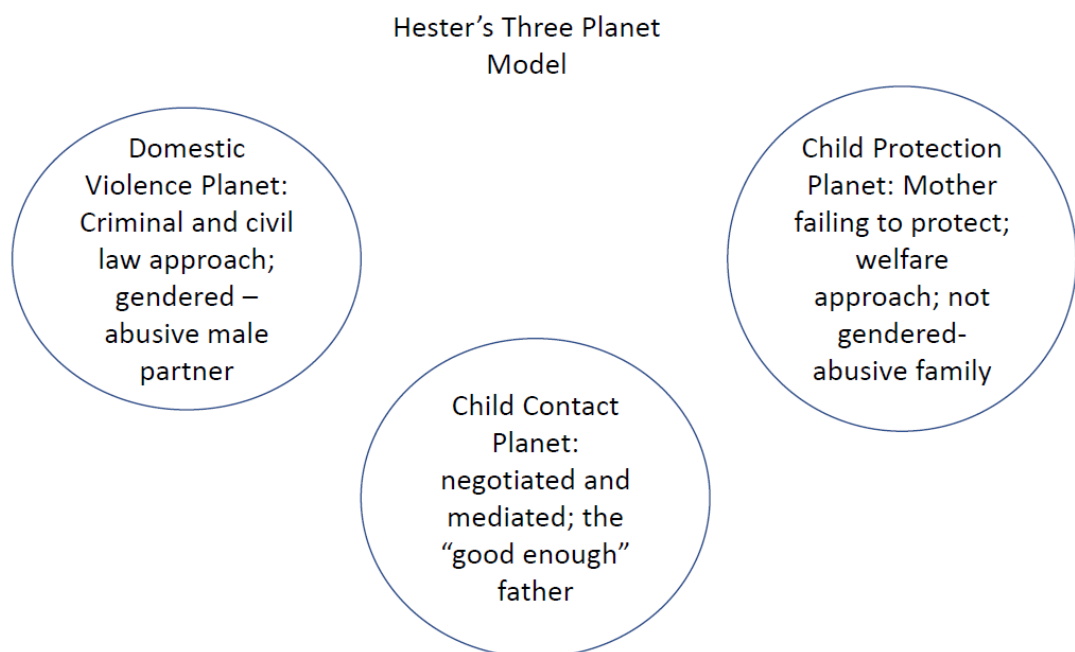
The abused mother has relationships with a range of systems and professionals whilst her child is the subject of a child protection plan. She is expected to represent herself and share her feelings during meetings and she is expected to make significant life choices and very quick changes to aspects of her life which she may have been dealing with alone for a long time. In order for an abused mother to make these choices and represent her own wishes and needs, she must first possess the ability to think and act autonomously. The abusive relationship erodes the mother's autonomy, yet the systems she finds herself involved with expect her to exercise autonomy. The purpose of my study was to examine the abused mother's relationships to determine to what extent they promote or negate her autonomy. The capacity for autonomy is vital for the mother's ability to navigate the labyrinth of services and manage relationships with a variety of professionals, who have different (often competing) expectations, processes and rules.

This study has examined eight mothers' relationships using the relational autonomy framework which requires the identification of structuring forces within relationships. These forces affect the power dynamics between the mother and various professionals and construct the relationship as one which is supportive of the mother's autonomy, or which reduces her ability to think and behave autonomously. The framework also requires the identification of the practices employed by professionals, some of which may mitigate the structuring forces and enable the relationship to foster autonomy (and other core values) within the mother. However, many of the professionals' practices

exacerbate the structuring forces and further eradicate the mother's ability to exercise autonomy in the relationship, and beyond.

7.1 Development of Hester's Three Planet Model

As introduced in chapter one, and referenced throughout, the Three Planet Model provides a means for understanding the different approaches of various professionals across the three planets of domestic abuse, child protection and child contact. Systemic tensions and contradictions between the three planets make it difficult for those inhabiting the planets to come together to support the abused mother in a cohesive and coordinated way.¹



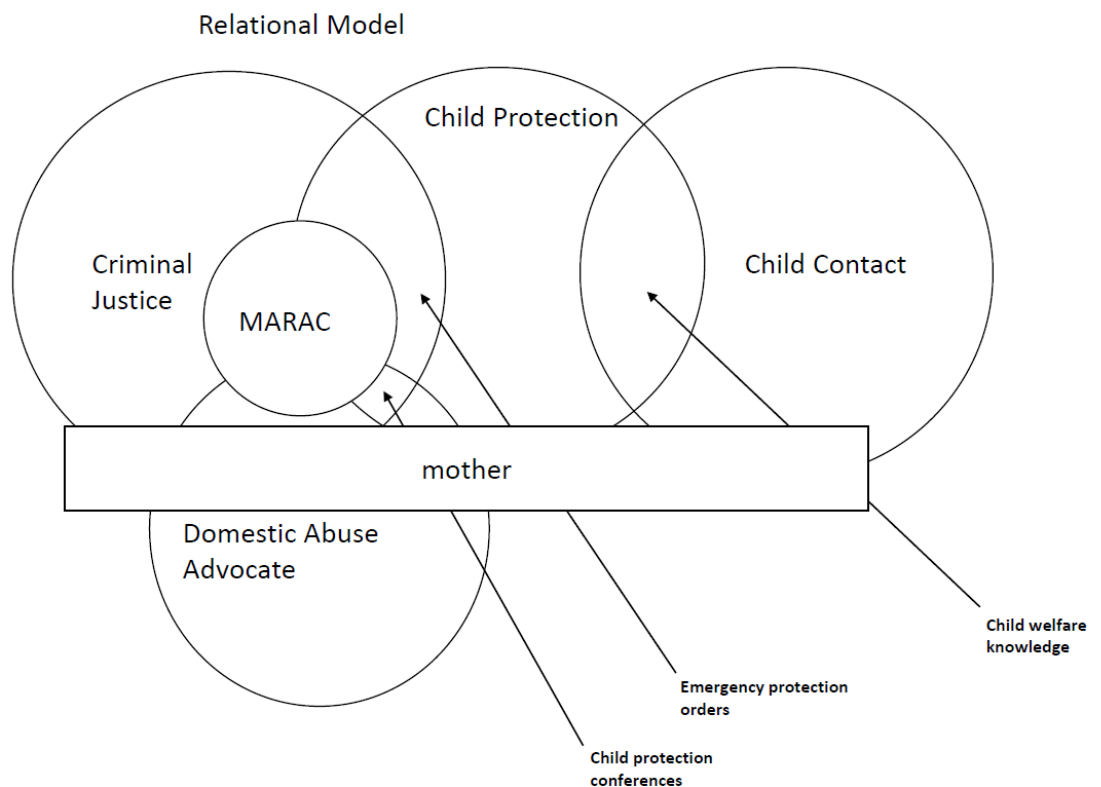
¹ Hester, M “The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children’s Safety in Contexts of Domestic Violence” *British Journal of Social Work* 41 (2011) p.839

The findings in my research are consistent with Hester's in terms of professionals' lack of understanding of other professionals' assumptions and working practices.² For example, social workers indicated that the criminal justice system was to blame for not addressing the issues with the abusers. Similarly, the police officers and solicitors spoke about social workers' lack of pro-activity when supporting the abused mothers and how this intensified the effect of domestic abuse on the mother.

As a result of my study I would suggest some revision of Hester's model. Hester places the police, the advocate and the mother on a domestic violence planet because she says they have the same purpose. My research has highlighted that they do not occupy the same planet. The purpose of the police, on the criminal justice planet, is to reduce crime by securing prosecutions against abusers. The mother's purpose is to stay safe, which does not necessarily include the arrest and prosecution of her abuser. The advocate's purpose is to reduce the mother's risk by accessing whatever services suit the mother's needs best. The social worker, on the other hand, occupies both the child protection and the child contact planets. Although her purposes are different on each of the planets, she moves between them depending which specific function she is serving as a child welfare professional. I would also argue that the mother is not physically situated on any of the planets yet is expected to navigate and participate on all of them.

My study identified a relational understanding of the conflicting expectations experienced by the abused mothers and also by some of the professionals tasked with responding to the mother as a victim of domestic abuse.

² *ibid* p.850



The diagram above illustrates how, contrary to the Three Planets Model, the practices of the planets overlap. For example, where the police, social services and the domestic abuse advocate converge at the MARAC and the child protection conference; where the police and social services' work merges in cases of emergency child protection, or where the social worker's child welfare expertise is required within the family court setting. This increased overlapping of practices could be a result of the emergence of multi-agency responses to domestic abuse, which have been in development since Hester's model was produced in 2011. As the diagram indicates, the family court setting does not involve the police, the MARAC or the domestic abuse advocate, which is indicative of the way child contact issues appear to exist somewhat independently of the mothers' day to day experiences of domestic abuse.

7.2 The Effects of Forces and Professional Relationships

My findings revealed that gendered relations which are prevalent throughout society and permeate all areas of life, had a significant structuring role in all of the mothers' relationships. In some of the mothers' relationships juridical power forces were explicitly present, for example in their relationship with the social worker in the child protection context, the police and the family law system. This power force structured the mothers' relationships with the professionals in those settings, in a way which reduced the mothers' ability to think or act autonomously due to the threat of coercion. The gendered forces which were present in all of the mothers' relationships compounded the power of the law as there were disproportionate expectations placed on the mothers due to their gender, whilst the fathers had the ability to choose not to be involved, or not to engage with the processes. In the relationships between the mothers and their social workers, the police and the family law system there were also biopolitical forces present. These forces shaped the relationships in a way which led to the professionals' expertise being afforded a higher status than the mothers' lived experiences which reduced the mothers' autonomy. The professionals wielded their power in the shape of norms of behaviour which the mothers were expected to adhere to. Within these relationships the power of the law was always present, in the form of legislation available to the professionals if the mothers did not adhere to the biopolitical norms. The juridical power strengthened the biopower and when these forces were combined the mothers increasingly lost their ability to think or act autonomously as their behaviour was expected to fall in line with the professionals' requirements. The perpetual presence of the gendered forces which placed an expectation on the mothers to behave in line with the norms of motherhood, whilst not expecting the fathers to

engage in the child protection process, further exacerbated the biopolitical power wielded by the professionals. The mothers were blamed for the abuse and were expected to facilitate contact between the abusers and their children. Yet at the same time, the fathers were given space to decide how involved they wanted to be with their children. This exacerbates the juridical power, which is utilised to coerce the mothers into behaving in line with biopolitical norms. It is at this point, where the juridical, biopolitical and gendered forces intersect that impossible expectations are created. The mothers have little or no opportunity to think or behave autonomously, because their voices are lost within the expectations of the systems and the professionals who operate in these systems. The expectations are contradictory to one another, and the mothers are not able to satisfy them all.

The domestic abuse advocate is an expert on risk and on the mother as a victim of domestic abuse. The biopolitical practices of categorisation and normalisation of the mother, as the subject of the advocate's expertise, have the ability to reduce the mother's status below that of the advocate's. However, the practices of the advocate largely mitigate the biopolitical force. The mother is able to choose to be involved with the advocate, which somewhat redresses the imbalance of power created by the presence of biopower. The mother can pro-actively access the advocate's support, benefit from her knowledge and work with her to become safe. However, issues arise when the mother does not willingly consent to support from the advocate, for example when her involvement with the advocacy service forms part of her child protection plan. There is also a risk of the mother becoming dependent on the advocate. This risk is especially apparent where an abusive partner has not allowed the mother to make

decisions whilst in the relationship. Once this relationship ends, the advocate risks becoming a substitute for the decision-maker in the mother's life. If the mother's dependency upon the advocate is allowed to continue, it does not encourage the mother to exercise her autonomy. A further situation, involving the advocate, which negates the mother's autonomy is the multi-agency setting of the MARAC where the expertise of the advocate trumps the mother's lived experiences. Her lack of physical presence at the MARAC makes it impossible for her autonomy to be promoted within that setting. There was evidence throughout the case studies of the advocates' views holding more weight than the mothers'. The mother's relationship with the advocate is intended to promote her autonomy, and when the advocate's expected practices are followed this objective is largely achieved. The issues arise when the relationship is played out in multi-agency settings, as the forces and practices of other professionals permeate the relationship and re-structure it in a way which does not promote the mother's autonomy.

The mother's relationship with the social worker generally negates the mother's autonomy. The mother does not choose to enter into this relationship and throughout the relationship she has very little choice but to follow the plans made for her by the social worker, or risk her child being removed from her care. The power of the social worker as a child welfare expert is very apparent, whilst the coercive force of the law strengthens the social worker's status further, rendering it very difficult for the mother to exercise any autonomy in the relationship. The social worker should be well placed to offer support to the mother and to work alongside her in much the same way as the advocate does. However, the social worker's coercive strength is exacerbated by her

lack of domestic abuse knowledge and her lack of understanding of the mother's situation as a victim of domestic abuse. The mother is very aware of this power imbalance which is worsened by the social worker's lack of meaningful engagement with the father, despite his abusive behaviour ultimately being the reason for the family's involvement with the child protection process. The social worker expects the mother to have control over the abusive behaviour of the father and requires her to end her relationship with him, otherwise she is deemed to be failing to protect the children. However, it was evident from the case studies that when the same social workers entered the family court setting, their normative expectations shifted, and they supported the child's ongoing contact with their abusive father. The contradictory expectations emitted from the same professional are indicative of the confusing situation that the mother faces when child welfare professionals from the child protection setting enter the family court setting. The mother finds herself faced with an impossible situation, where she is not regarded as an individual with autonomy but framed as the problem.

The police face increasing and conflicting expectations when responding to abused mothers. These expectations have an impact upon their relationship with the mother, as she is left unsure of the response she will receive from officers if she contacts them for assistance. Risk assessments created by police officers are built upon an inadequate understanding of domestic abuse, not as a continuous and pervasive course of conduct, but as isolated (violent) incidents. The risk assessments are relied upon to determine ongoing safety plans for the mothers, and to allow her access to services. The inconsistent and inaccurate risk assessments therefore fail to promote each mothers'

specific safety needs. Police responses can vary from attending and investigating officers being dismissive of the abuse if they deem that the mother is not behaving in line with the norms of victim behaviour; to the police being overtly pro-active, where they proceed with the criminal justice process without the mother's consent. Neither of these approaches promote the mother's autonomy.

The mother's relationship with her solicitor can promote her autonomy within the court setting, to the extent that she may be able to feel an active part of the process. The involvement of the solicitors gave the mothers confidence to navigate the family court system. However, these feelings of empowerment were mostly superficial as the outcome of the court hearings was at the mercy of a strong culture of encouraging a "separated but continuing model" of parenting, regardless of the mothers' individual experiences of abuse. Without legal representation the mothers were unable to advocate for themselves and they felt unable to convey their wishes and feelings to the court. The court practices are not concerned with the mother's autonomy and moreover, mothers were generally regarded as the obstacle to the fathers' ongoing involvement with the children.

The power of each professional is structured depending on the setting within which they are situated. For example, the social worker holds a high status within the child protection setting, whilst despite the social worker's child welfare knowledge being utilised by the court, the judge has overall control of the family court setting. The mother has a low status within all of the settings, as she is either in need of support from an expert for her voice to be heard, or without legal representation her experiences may be side-lined in favour of the father's request for contact. In multi-agency settings such

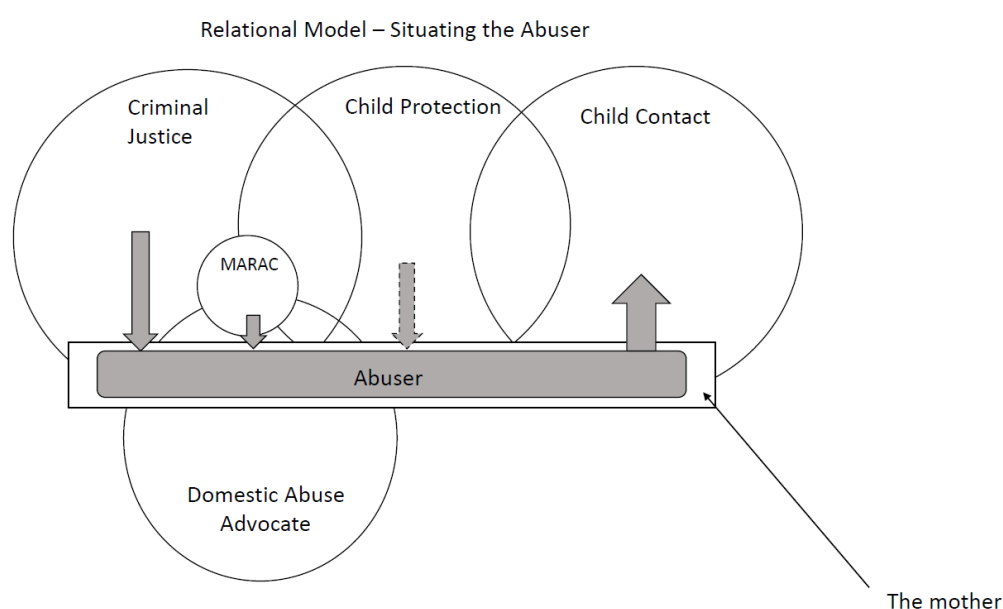
as child protection conferences and MARACs, the majority of those in attendance are recognised as experts therefore a hierarchy of expertise comes into play. Within the MARAC the police hold the highest status. They are the experts on the management of the abuser and they work within a framework of risk and harm, while the mother's behaviour may not correspond with how they expect a victim of crime to behave. The advocate holds a prominent place within the MARAC as the expert on the mother, and when she applies her expertise with the mother's viewpoint in mind she is able to promote the mother's autonomy to some degree, even in the mother's absence. However, the social worker is the expert on the child and on the mother (as a mother) which includes holding her to account for the abuse. In order for the mother's voice to be heard within the MARAC the advocate must be able to bring the mother's experiences to the setting in such a way that they trump the expertise of the police and the social worker, otherwise the mother becomes categorised as an unreliable or culpable victim, or as an unprotective or reckless mother.

This scenario is also played out within the child protection conferences and core groups, which have a different dynamic due to the mother's presence. In this setting she is expected to give an account of herself amongst a plethora of expertise. Professionals attending these meetings bring their own sets of core beliefs regarding domestic abuse and these could be in conflict with one another. The information presented in this setting could therefore be weighted in terms of the beliefs held by the presenter, and any chance of collaboration with the mother replaced by judgement of her and her situation. The multi-agency response to domestic abuse also occurs in less formalised ways, for example telephone calls between social workers and police, or between the

advocate and the police. Within the scheduled meetings and the informal day to day interactions between the professionals involved with the mother, there are variations of understanding of her experiences, different levels of empathy and ultimately the professionals have different intentions. The mother's autonomy is at the mercy of this amalgam of expertise.

7.3 The Effects of the Abuser's Practices

The practices of the abuser negated the mother's autonomy when they were in a relationship, and after separation his involvement within the various systems continues to structure her as a victim of his abuse and continues to affect her autonomy. The abuser's presence is felt, even in his absence. The mother's only relationships which do not include her abuser are those she has with her advocate and the solicitor, whilst all of her other relationships are "shared" with the abuser.



The above diagram illustrates how the involvement of the abuser and his abusive behaviour (his practices) affect the mother's relationships. The social worker may not

fully engage with the abuser, but they attempt to communicate with him and if the abuser chooses to be involved, as some of the mothers' ex-partners did, both parents would be involved with the same social worker. The abuser (as a criminal) is pivotal to the police's role, and in fact the mother's involvement with the police is at times inconsequential. The father is most often the applicant in private family law proceedings and is involved with the relationships within the court setting, albeit in varying degrees. There is evidence throughout the case studies of ex-partners manipulating the professionals in different ways, making excuses for and minimising their abusive behaviour, blaming the mother and reporting the mother to the police and to social services in a bid to control her. The relationship with the advocate and the solicitor solely involves the mother, which allows a more consistent and focused approach to the mother's needs, without the risk of the abuser's behaviour manipulating and structuring the relationship. This may help to explain why the advocates and the solicitors better promote the mother's autonomy.

In my study there was evidence of the abuser's use of the family court system to extend his control of the mother post-separation. This is made easier for the abuser due to the professionals' widespread lack of understanding of coercive control, in addition to the value placed on promoting children's ongoing contact with both parents and the "separated but continuing" family model. The abusers' proficient mobilisation of juridical power as a continuation of control over the mothers post-separation was evident throughout my study. The mothers, by contrast, did not recognise juridical power as a force which they could wield, yet the abusers appeared to have an affinity with juridical power. I would argue that this is an extension of the gendered power

wielded by men throughout society. On the other hand, the structuring force of biopower is an extension of the norms of behaviour society places upon women, especially as mothers, which reduces their opportunities to exercise power. The mothers adjust their behaviour in line with what is expected of them, whilst the fathers appear comfortable and familiar with exploiting power systems in order to structure the situation to their advantage.

7.4 Implications for Professional Practice

The recurring practice themes of choice, knowledge and consistency which emerged throughout the case studies can be applied to the statutory and policy responses to domestic abuse, in order to adapt professional practices to better promote the mother's autonomy. By creating a relationship with the mother which promotes her autonomy, a professional may be able to mitigate the effects of the wholly negative abusive relationship. The promotion of the mother's autonomy may in turn reduce the long-term need for the involvement of statutory services with the families and allow the mother to make sustainable changes for herself and her children.

7.4.1 Choice

The mother's choice to be involved in a relationship appears to influence her status in that relationship. Whilst it is obviously difficult for statutory agencies to give the mother a choice to be involved with them, this does indicate that the relationships where the practices of professionals allow her to feel as if she has choices may benefit the mother more. In turn, relationships built on the involvement of the mother are more likely to lead to sustainable changes, which the mother is motivated to make for herself. If the

mother is involved in the design of her support, she is more likely to feel part of a journey rather than a passive (or bullied) recipient.

Professionals who are involved in supporting or responding to abused mothers could adapt their practices to encourage collaboration with the mothers. Enlisting the mothers as experts through experience, to help shape systems that they are involved in, may mitigate the negative effects of the biopower which is wielded by the trained professionals. This could be at the strategic level, for example ensuring that boards of directors or trustees include women who are survivors of abuse, or at operational level service user forums can be developed. On an individual level those who work with survivors of abuse should involve their clients in developing safety plans. An example of this can be seen in the Signs of Safety model, which is currently used by many child protection teams across the United Kingdom. Created in Australia, during the 1990s, the Signs of Safety model uses “strengths-based interview techniques.” The model requires social workers to engage collaboratively and in partnership with families and children, to conduct risk assessments and produce plans to increase the safety of the family. The process focuses on the strengths and networks of the family, establishing constructive working relationships and partnerships between professionals and family members.³ By engaging the families with the process, the aim is for the development of a “constructive culture” around child protection. This is in place of a paternalistic model, where professionals adopt the stance that they know what the problem is and what the solution is, with no involvement of those whose problems they are aiming to solve.⁴

³ Turnell, A *The Signs of Safety Comprehensive Briefing Paper* Resolutions Consultancy (2012) p.9

⁴ Bunn, A *Signs of Safety in England: An NSPCC Commissioned Report on the Signs of Safety Model in Child Protection* (2013) p.10

Although it would be naïve to assume that this model has led to mothers feeling empowered in their relationships with social workers, and because of this the relationship is no longer structured by the obvious presence of juridical power, this model does shift the balance a little as it actively aims to involve the mother in all stages of the child protection plan. The social work teams in the area of my study implemented the Signs of Safety model in 2015. It would be worthwhile to undertake a follow up study of abused mothers' experience of the child protection process in this location since the introduction of the Signs of Safety model.

The Family Drug and Alcohol Court (FDAC) is another example of how a statutory response to mothers in the child protection system has shifted focus to better involve the mother in her own support. FDAC is known as the “problem solving court” and operates within the framework of care proceedings. The initiatives include judicial continuity and a problem-solving, therapeutic approach which involves the judge engaging directly with parents who are in care proceedings due to substance misuse. A multi-disciplinary team works with the court and the parents to devise an intervention plan tailored to them. Harwin et al. conducted an evaluative study of the FDAC and found that at the end of proceedings, parents whose cases were heard in FDAC were more likely to stop their substance misuse, than those heard in ordinary proceedings.⁵ Parents who have successfully navigated the court system via FDAC are encouraged to become parent mentors who offer support to their peers. By involving the parents in the process, encouraging them to set achievable goals and supporting them closely to

⁵ Harwin, J, Alraih, B, Ryan, M and Tunnard, M *Changing Lifestyles, Keeping Children Safe: An Evaluation of the First Family Drug and Alcohol Court (FDAC) in Care Proceedings* Brunel University (2014) p.2

achieve these goals, the FDAC process goes some way to address the power imbalance which is inevitable within a process where children may be removed from their parents.

Mothers who are afforded choices feel as if they are part of a process, which they do not really have a choice but to be involved with, rather than passive recipients of a service. The ability to exercise choice is part of the overall capacity for autonomy. Thinking and behaving autonomously is a capacity which needs to be nurtured and developed. Reducing the availability of choices reduces the function of autonomy and conversely, increasing the opportunity for choice can promote autonomy.

7.4.2 Knowledge

If all professionals working with survivors of abuse had a comprehensive understanding of the experiences of the abused mothers, and equally importantly, an understanding of the other systems which the mother is expected to navigate, they could adapt their expectations in line with what it is possible for the mothers to achieve. This would begin to promote the mother's autonomy as she may be able to access support which is relevant to her individual needs. It is not sufficient to provide professionals working with families or in the criminal justice system with short and sporadic training sessions on domestic abuse. Domestic abuse is pervasive and widespread throughout society and awareness training should be robust to reflect the high numbers of families affected. Statutory agencies could appoint domestic abuse ambassadors, or champions across their organisations who can hold their colleagues to account if they identify poor practice. Additionally, training would be better provided by specialist agencies, who can deliver consistent sessions informed by their practice. Internal training does not provide a wide enough knowledge base for professionals, who would benefit from

understanding the complexities of domestic abuse from a broader viewpoint, and certainly one which includes the mothers' experiences.

Furthermore, if professionals maintain a good understanding of coercive control, they are better placed to recognise the manipulative practices of an abuser. As mentioned above, the majority of the professionals involved with the mother are also involved with the abuser and his behaviour structures the mother's relationships. If professionals such as social workers, police officers and court personnel are able to recognise the controlling tactics of the abuser, they may be able to adapt their response to him in a way which does not strengthen his power within the relationship. Additionally, if professionals are able to understand how the relationships have been structured by the abuser's behaviours, they may be better placed to re-address the imbalance of power to ensure the relationship does not continue to perpetuate control of the mother. Finally, a greater understanding of how the abusive behaviours of the father affect the mother and child pre and post-separation will increase the ability of the professionals in assisting the mother to protect herself and her child, instead of placing them at increased risk following separation. Encouraging professionals' knowledge of abusive tactics may counteract the abusers' exploitation and manipulation of the systems within which the mother is also involved, and therefore reduce his ability to continue to control the mother through her involvement with these systems.

If all professionals who enter relationships with the abused mother in the child protection process were motivated to learn how those various relationships interact, and at times collide, and how they might best support the mother to protect her child, the mother's autonomy could be promoted to the point where she is able to navigate

the plethora of expectations she is faced with. An understanding of individual mothers' situations would enable support provisions which are specific to each of the mothers' needs. This would create a support provision which allows her to think and behave autonomously.

7.4.3 Consistency

By enhancing and broadening the knowledge of professionals and holding to account those who display negative and judgemental attitudes towards domestic abuse victims, the service provided to victims of abuse should become more consistent. If the abused mother knows what response she is likely to receive when she calls police, she can make a plan around that response. She can expect to be treated the same way by any social worker allocated to her family. And if the family court system, including the judiciary, adopted a fully informed approach to cases where there are allegations of domestic abuse, the mother would be able to enter into the family court process with some semblance of faith that the system would consistently take her and her child's safety seriously.

In summary, the relationships which best promote the mother's autonomy are those which she enters into by choice, and which include practices which give her options, involve her in the design of her support and which provide her with a specialist response which is specific to her needs, as an individual and a survivor of domestic abuse. Professionals with sound knowledge and an interest in the complexities of domestic abuse are more able to build rapport, assess the situation and ensure the mother is provided with what she needs to navigate her way around the systems she is faced with. Relationships which provide the mother with a consistent response, enable her to make

informed decisions about her relationships and her future. Until the mother is recognised as the expert of her own experience, and afforded the respect which this deserves, her status will continue to be undermined and she will continue to be faced with impossible expectations.

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www.basw.co.uk/professional-development/professional-capabilities-framework-pcf

Cafcass

www.cafcass.gov.uk/

College of Policing – Authorised Professionals Practice

www.app.college.police.uk/

Courts and Tribunals Judiciary

www.judiciary.uk/

The Duluth Model

www.theduluthmodel.org

Family Law Week

www.familylawweek.co.uk

HCPC- Standards of Proficiency

www.hpc-uk.org/aboutregistration/standards/standardssofproficiency/

HM Government

www.gov.uk

Institute for Public Policy Research

www.ippr.org

Kent County Council - Child Protection

www.kent.gov.uk/education-and-children/protecting-children

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www.domesticabuseservices.org.uk/

Kent Police

www.kent.police.uk/

Kent Safeguarding Board

www.kscb.org.uk/

The NSPCC

www.nspcc.org.uk

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SafeLives

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Women's Aid

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Appendix One – Consent Form for Professionals



Liza Thompson

PhD student – Queen Mary University

Service Director – SATEDA

Email: liza.thompson@qmul.ac.uk

Mobile: 07932 696 547

Consent form

Impossible expectations? A study of the experiences of abused mothers in the child protection process.

This research project aims to examine the various relationships in the lives of mothers who have experienced domestic violence and are involved with a child protection plan.

I understand that I will be interviewed for approximately an hour.

I give/do not give permission for my interview with the researcher to be recorded (delete where appropriate).

I agree to the researcher having access to my case file in respect of the mother in the centre of the study.

I understand that at any time during the process I can withdraw my involvement in the study and all parts of the process will stop immediately.

I have read and kept a copy of the information sheet and I understand that the research will be carried out as described in the information sheet.

I understand that participating is wholly my choice and that my identity will be completely anonymous throughout the final report.

I have had all my questions answered satisfactorily and know how to contact the researcher if I have further questions.

I would/would not like to receive a summary of the research findings when the project is complete and will discuss with the researcher how these results will be provided to me. For example, if I would like my team to take part in an awareness session I will arrange this with the researcher.

Name.....

Signature.....

Date.....

Researcher

signature.....

Date.....

Appendix Two - Consent Form for Mothers



Liza Thompson

PhD student – Queen Mary University

Service Director – SATEDA

Email: liza.thompson@qmul.ac.uk

Mobile: 07932 696 547

Consent form for mothers

Impossible expectations? A study of the experiences of abused mothers in the child protection process.

This research project aims to examine the various relationships in the lives of mothers who have experienced domestic violence and are involved with a child protection plan.

I understand that I will be interviewed for approximately one hour

I give permission for the researcher to observe the MARAC meeting about my case.

I give permission for the researcher to have sight of my IDVA's file, actions and minutes from the MARAC meeting about my case, my social worker's file, my solicitor's case file and the police file relating to my case.

I agree/do not agree for my interview with the researcher to be recorded (delete where appropriate)

I understand that at any time during the process I can withdraw my involvement in the study and all parts of the process will stop immediately.

I understand that my involvement in the study does not affect any aspect of my family's involvement in the child protection or family law processes.

I have read the information sheet and I understand that the research will be carried out as described in the information sheet. I have kept a copy of the information sheet (if it is safe to do so). I realise that participating is wholly my choice and that my identity will be completely anonymous throughout the final report.

I have had all my questions answered satisfactorily and know how to contact the researcher if I have further questions.

I would/would not like to receive a summary of the research finding when the project is complete and will arrange a safe way of receiving these with the researcher.

Name.....

Signature.....

Date.....

Researcher

signature.....

Date.....

Appendix Three – Mothers' Interview Guide

Introduction

- Introduce self
- Ask about the family, children, partner
- Current relationship with partner? Nature of DV?
- How did child protection issues arise? What's happened so far?

Social worker

- 1) Please tell me about your relationship with your social worker
 - a) How does she make you feel?
 - b) How does she communicate with you?
 - c) Do you feel she gives you choices? How/why not?
 - d) Tell me about the meetings you have to go to?
 - e) How do they make you feel?
 - f) Is there anything you think should be happening in the child protection process that isn't?
 - g) Is there anything you would like your social worker to do differently?

Police

- 2) Have you had any contact with the police? If yes...
 - a) Tell me about any processes you have been through with the police, for example when you have contacted them or attended the police station
 - b) How did this contact with the police make you feel?
 - c) How do they communicate with you?
 - d) How and when do you feel you have choices when working with the police?

- e) Is there anything you'd like the police to do differently in their interactions with you?
- f) Is there anything you think the police could do to improve their dealings with domestic abuse survivors in general?

Solicitor / Family Court

- 3) Do you have a solicitor who has worked with you? If yes...
 - a) How does s/he make you feel?
 - b) How does s/he communicate with you?
 - c) Do you feel s/he gives you choices? (How/not?)
 - d) Tell me about the meetings you have had with your solicitor?
 - e) Tell me about any court appearances you have had with your solicitor or barrister?
 - f) How did you feel when you went to court?
 - g) Is there anything you wish was different about the family law process?

MARAC

- 4) Please tell me what you know about MARAC. Do you know if your case has been to a MARAC?
(If relevant...)
 - a) How do you feel about the MARAC process?
 - b) Is there anything you would change about the process to make it work better from your perspective?
 - c) What information were you given after the MARAC?
 - d) Was that information helpful for you? (Why/not?)

IDVA

- 5) Please tell me about your relationship with your IDVA
 - a) How does she make you feel?
 - b) How does she communicate with you?

- c) Do you feel that she gives you choices? (How/not?)
- d) Tell me about the meetings you have to go to with your IDVA
- e) How do these meetings make you feel?
- f) Is there anything you'd like your IDVA to do differently (or to do more of)?

Conclusion

- How do you think the child protection process will end up?
- How does that make you feel?
- Do you feel you have enough support in the process overall? (If not – what more support would you like to receive?)
- Is there anything else you'd like to say that I haven't asked about?

Thank you for your time.

Appendix Four – Social Worker Interview Questions

Introduction – ice-breaking questions about SW training and qualifications, how long qualified, nature of current job and how long in that role

First I will ask you some questions specifically about(the mother's case)

- 1) Could you tell me about ... and your involvement with her case?
- 2) Can you tell me about your relationship with?
- 3) Where do you meet with ... and why?
- 4) Is there any difference between meeting within her home and in the office space? – does her behaviour (and your behaviour) differ? (In what way?)
- 5) And what about the core group and the conference?
- 6) Can you tell me about your relationship with's [abusive] partner? (Have you had much/any dealings with him?)
- 7) How confident do you feel addressing the issues faced by And her child(ren)?
- 8) What would you like to be the outcome of 's case? Is that what you think will happen? Why/not?
- 9) Is there anything you would ideally like to change in this case
 - a) About 's behaviour/involvement?
 - b) About 's partner's behaviour/involvement?
 - c) About your own involvement?
 - d) About anyone else's involvement?

And now some general questions about being a social worker and the child protection process

- 10) What would you say your particular expertise is as a social worker?

- 11) In a child protection case (involving domestic abuse), what do you see as your role in relation to (a) the children; (b) the mother; (c) the father
- 12) What do you understand by partnership working within child protection?
- 13) How do you think this works in practice?
- 14) Tell about the PCF – or the HCPC – and how it affects your work day to day?
- 15) Can you tell me about case conferences in terms of decision making, for example is it harder to make a decision about your case at a conference?
- 16) Can you talk me through the decision making process?
 - a) Who else do you consult
 - b) what factors do you take into account
 - c) who's opinion do you take account of
 - d) how much discretion do you believe you have in making big decisions about your cases?
 - e) Would you like more discretion or less?
- 17) Do you feel the recent controversies and changes around child protection (Baby P, Munro report, etc.) have changed the way you do your job? (If so, in what way? For better or worse?)

And some general questions about domestic abuse

- 18) Have you had any specific training about domestic abuse?
- 19) What do you understand as domestic abuse?
- 20) Why do you think domestic abuse happens?
- 21) What's your understanding of the effects of domestic abuse (a) on children living with the abuse; (b) on the abused woman?
- 22) What do you think is the most effective way of protecting children from the effects of domestic abuse?

23) What do you think is the most effective way of stopping domestic abuse?

24) Do you think other participants in the system share the same understanding of domestic abuse and its effects and how it should be addressed (e.g. MARAC participants, IDVA, police, Family Court)? (If not, what differences?)

Anything I haven't asked that you wanted to add?

Thank you for your time.

Appendix Five – Police Interview Questions

Introduction - Ice breaking questions about rank, length of time in the force, nature of current role in relation to domestic abuse

- 1) What do you feel sets domestic abuse cases apart from other cases for the police?
- 2) Are there specific policy requirements for working a domestic abuse case? If so, do you think these are suitable/helpful?
- 3) What do you understand about multi agency working from a police perspective within domestic abuse cases? Referrals to other agencies?
- 4) Can you talk to me about the exercise of discretion in police work, and specifically around domestic abuse cases? – decisions to arrest and charge
- 5) Can you explain to me how the public protection unit works?
- 6) How do you think police work has adapted to take into account the raised awareness of domestic abuse?
- 7) What particular difficulties do you think are presented in domestic abuse cases? Is it possible to adapt police work to overcome these difficulties?
- 8) Can you talk to me about civil orders ?
- 9) What is your experience of using DVPOs?
- 10) Would you like to add anything else you think I may have missed?

Thank you for your time

Appendix Six – Solicitor Interview Questions

Introduction - explain the discussion is a general one and I won't be asking about specific cases – however if she wants to use specific cases as examples I will anonymise all identifying factors

Explain that this study is particularly interested in mothers involved with the CP process so I won't be using gender neutral terms - therefore I will be referring to the mother when I am talking about the victims and I will be referring to the fathers when I am talking about perpetrators

Explain semi-structured questions – the interview will be approximately one hour

- 1) Ice breaker - Please tell me a bit about yourself – how long have you been practising, do you work specifically within a Family Law Firm, do you specialise within a particular field of family law
- 2) Could you please tell me what your experience is of family law cases where domestic abuse is a factor
 - a. For example, how often do you find DA is a factor in FL proceedings
 - b. Or are there particular orders where you tend to see DA being present
- 3) At what stage in proceedings do you tend to be made aware of DA being an issue
 - a. For example, do you see applications coming in *because* of DA or is this something that tends to come to light after you have started proceedings
- 4) In what ways does the mother's experience domestic abuse effect proceedings
 - a. For example, does this problematize or complicate the proceedings
- 5) How do you think your practice differs when DA has been a factor?
- 6) Have you experienced a shift in the family courts' response to proceedings where DA is a factor – and if so how?
- 7) Could you talk to me about the use of mediation in proceedings

- a. For example, do you think it is a positive tool
 - b. Do you think it is utilised effectively – or safely
 - c. Have you seen a shift/increase in the use of mediation
- 8) How do you think the changes in legal aid have affected family law proceedings in general
- 9) And specifically where there is DA disclosed
- 10) Would you like to add anything else about your experiences of representing mothers who are victims of domestic abuse

Thank you for your time